Public Utilities

FORTNIGHTLY

March 7, 1929

PUBLIC UTILITIES REPORTS, INC.

PUBLISHERS

HENRY C. SPURR, *Editor*
KENDALL BANNING, *Editorial Director*
ELLSWORTH NICHOLS, *Associate Editor*
FRANCIS X. WELCH, *Contributing Editor*
M. M. STOUT, *Assistant Editor*

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PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

PUBLIC UTILITIES FORTNIGHTLY; a magazine dealing with the problems of utility regulation and allied topics, including the official decisions of the State Commissions and courts; endorsed by the National Associations of the Utility Industry and by the National Association of Railroad and Utilities Commissioners, and supported in part by those conducting public utility service, manufacturers, bankers, accountants and other users of the publication. Published every other Thursday; 75 cents a copy; $15.00 a year; with bound volumes and Annual Digest, $32.50 a year. Editorial and advertising office, Munsey Building, Washington, D. C., circulation office, Duffy-Powers Building, Rochester, N. Y. Entered as second-class matter April 29, 1915, at the Post Office at Rochester, N. Y., under the Act of March 3, 1879.

Pages with the Editor

EVIDENCE is multiplying that not only is PUBLIC UTILITIES FORTNIGHTLY increasing in circulation, but that the subscribers are scanning it with closer attention.

* *

MOST of this evidence is in the form of letters that reach the Editor—letters that contain comment on controversial points that are touched upon in the articles which are appearing in the magazine, and letters that ask questions.

* *

SOME of these questions touch upon such fundamental points that more and more of the Editor's time is engaged in answering them.

* *

ON the assumption that some of these questions and answers are of interest to a large number of our readers, the Editor has selected several for publication. They will appear as a special feature in a coming issue of this magazine.

* *

IN the last issue of PUBLIC UTILITIES FORTNIGHTLY, the Editor reported his reactions to his recent contacts with the Federal Trade Commission—with specific reference to its present inquiry into the public utility situation.

* *

IT is of interest, therefore, to get the Federal Trade Commission's views, and to learn at first-hand something about its history, plans, purposes and methods.

* *

THE Editor has, therefore, invited Worthy P. Sterns, Ph.D. (University of Chicago, 1900), who has been connected with the work of the Bureau of Corporations and the Federal Trade Commission since their beginnings, and who has just retired from Government service, to tell our readers something about that active organization. And Dr. Sterns' article is so interesting that the Editor will feature it in the forthcoming number—published March 21st.

* *

THE item on page 253 (of this issue), "Utility Facts Worth Noting" carries much the same heading as a small feature that the Editor conducted in a small town newspaper—with the grudging consent and under the highly caustic supervision of the publisher—when he was a small boy.

* *

THE department curled up and died, however, when the department appeared on a memorable occasion with a heading that the Editor will always believe was an inspired typographical error. It read: "Facts Worth Nothing."

* *

OUT of the mail bag comes the following letter to the Editor—from one of the most influential public utility executives in the country, Mr. P. S. Arkwright, president of the Georgia Power Company:

* *

"THERE can be no question of the value of PUBLIC UTILITIES FORTNIGHTLY to the public utility industry and those interested in it. These fortnightly issues are read regularly by me and by the heads of the principal departments of this company, especially the attorneys, sales department, and operating managers. Not only do we read these issues regularly but we keep them on file and consult them frequently. It is the only publication carrying a collection of decisions on regulations of public utilities. It is essential for executives and principal department heads of public utilities to keep informed as to these decisions, and they are read generally by the managers and directing heads of public utility companies. . . . . There are other magazines relating to the industry, of course, some of which may be found on every desk; but regardless of the others that may be found there, the PUBLIC UTILITIES FORTNIGHTLY is always found on the desks of executives and the principal heads of departments."

* *

AND if that is not evidence enough, here is another letter from an equally well-known executive—Mr. J. W. Lieb, vice-president and general manager of the New York Edison Company:

* *

"PUBLIC UTILITIES FORTNIGHTLY is considered among the important publications for which we subscribe, and is read carefully by our executives, department heads and attorneys, who find in it matters of great interest and importance to our industry. We heartily recommend your publication to utility companies as a medium through which matters of particular importance to them are presented in a concise yet complete form."

* *

FROM Chairman Harvey H. Hannah, of the Railroad and Public Utilities Commission of Tennessee (to cite an authority among the State Commissioners) comes this slap—on the back:

* *

"I WISH to congratulate you upon the

(*Continued on page VIII*)

fact that you are giving the country a fortnightly publication regarding the discussion of state regulation and allied topics which will be of very great interest and benefit to the state regulatory bodies throughout the Union."

* *

FROM all of which the Editor infers that PUBLIC UTILITIES FORTNIGHTLY enjoys somewhat the standing among public utility authorities as Mandy enjoyed with Rastus.

* *

"RASTUS," queried the lady, "does you love me?"

"MANDY, you is one woman I don't like none other no better than."

* *

AMONG the recent decisions that affect public utility companies, the following are of special significance; (they may all be found in the "Public Utilities Reports" section of this issue of the magazine):

* *

THE issuance of notes for less than twelve months is in several jurisdictions exempted from the laws that require Commission consent before the issuance of securities. But the California Commission in the Fay Water Company case, (page 607), has presented to it the question whether such notes can be renewed without authority if the combined terms of the original notes and the renewal notes exceed the period of twelve months, or if the renewal notes are issued more than twelve months after the date of issue of the orginal notes.

* *

ANOTHER controversy that involves deposits by customers to secure the payment of bills has been settled by the New Jersey Board in Forseberg *v.* Plainfield Union Water Company, (page 610). The Board also tells how a consumer may establish his credit so as to secure the return of his deposit.

* *

THE deposit question is again involved in Kintner *v.* Johnstown Telephone Company case, (page 613). The dispute arose when a telephone subscriber was required to deposit funds to insure payment of toll bills.

* *

THE agitation by a group of citizens for improved telegraph service met with failure in *Re* Richardson (page 616). The Arizona Commission did not consider the probability of revised activity in gold mining districts as sufficient to justify expenditures for improved facilities.

* *

ONE of the reasons why PUBLIC UTILITIES FORTNIGHTLY is becoming of increasing importance in its field lies in the fact that an increasing number of such influential men are reading it—including many of the most important public utility executives in the country.

ANOTHER reason lies in the fact that an increasing number of influential men are contributing to it.

* *

INDEED, many of the country's foremost authorities on the subject of public utility management and regulation are now being numbered among our authors; they include not only business men of eminence but also men who stand at the top in the realms of public service, law, economics and other activities that are directly and indirectly involved in our complicated public utilities' problems.

* *

IN this issue which you are now reading, for example, appear articles from the following authorities:

* *

PROF. HARRY GUNNISON BROWN, professor of economics at the University of Missouri, and the author of several books—including "Transportation Rates and Exchange," "Principles of Commerce," "Economic Service and the Common Welfare," "The Economics of Taxation," and others.

* *

HENRY R. HAYES, former president of the Investment Bankers Association of America, who has been actively engaged in finance since his graduation from Harvard in 1901, and is at present a director and officer in numerous large corporations—including, among others, such organizations as Stone & Webster, the Engineers Public Service Co., and the General Public Service Co.

* *

EDWARD A. FILENE, president of the famous retail Boston establishment of Wm. Filene's Sons Co., who is identified with so many associations of business men, and has been so actively engaged in the study of business problems and in public service work generally that nearly a column is required in "Who's Who in America" merely to list the honors and the offices he holds.

* *

IN this coming issue—out March 21st—this list will be augmented by such contributors as WILLIAM BUTTERWORTH, president of the Chamber of Commerce of the United States, HAROLD E. WEST, Chairman of the Maryland Public Service Commission—

* *

BUT it is not possible in this limited space to do more than generalize concerning the caliber of our contributors or the timeliness and importance of the subjects on which they are writing. Suffice to say that they run the gamut from United States Senators to university professors (or *vice versa*, as you prefer); from big corporation heads, lawyers and bankers to State and Federal Commissioners, (also *vice versa*), and from professional writers on economics, law, industrial management and finance down to

—THE EDITOR.

MARCH

Utilities Almanac

Reminders of Coming Events — *Notable Events and Anniversaries*

7	T^h	The first railroad passenger coach in the U. S. to be named was a gorgeous affair called "Dromedary," used on the Baltimore and Ohio line, 1831.
8	F	The suspension bridge was opened at Niagara, 1855. ¶ *Directors of Society for Electrical Development will meet in New York today, 1929.*
9	S^a	First complete sentence of speech was transmitted over a wire by ALEXANDER GRAHAM BELL to THOMAS A. WATSON, Boston, 1876.
10	S	A tremendous advance was made in the art of communication when GUGLIELMO MARCONI first sent a radio message a distance of four miles; 1897.
11	M	The trail was blazed for transcontinental railroads by pioneers, headed by NATHANIEL WYETT, who left Boston for Oregon in schooners, 1832.
12	T^u	THOMAS DAVENPORT, a Vermont blacksmith, originated the electric traction; his first (unsuccessful) model was exhibited in Springfield, Mass., 1835.
13	W	U. S. Express Co. retired after 60 years of business as a result of parcels post competition and reduced rates ordered by Interstate Commerce Commission, 1914.
14	T^h	The world's first electric light station was opened in Pearl Street, N. Y., by THOMAS A. EDISON, under the name of the Edison Electric Illuminating Co., 1881.
15	F	First telephone exchange in Louisiana was opened at New Orleans, 1879. ¶ *Remember your tax returns—due today!*
16	S^a	The electric light industry was given a wallop by the enactment of the Daylight Saving Law, 1918. Inland Waterways Commission was appointed, 1907.
17	S	An impetus is given to airplane transportation by the hop-off of four U. S. Army planes for its round-the-world flight, 1924.
18	M	First telephone exchange in N. Y. opened 1878. Railways originated in the "tramways" in England, for conveying coal from the pits, 16th Century.
19	T^u	The first important step taken in the development of the gas utilities was made by VON HELMONT of Brussels, whose experiments yielded "a wild spirit," 1609.
20	W	A strike of 40,000 tram and bus workers makes Londoners walk to work, 1924. ¶ *Spring begins today.*
21	T^h	The first railroad on the American Continent was incorporated under the name of the Pennsylvania Railroad by the Legislature of Pennsylvania, 1823.

"The new business which attains pre-eminence in its field today is one that contributes new power and greater service to the public, not merely one which supplants a rival in doing what the rival did."—WALTER S. GIFFORD.

Drawn by Abell Sturgis

HON. LESTER HOOKER

Chairman of the Virginia State Corporation Commission

—See Page 263

Public Utilities
FORTNIGHTLY

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The PUBLIC UTILITIES AND THE PUBLIC

THE great radio audience will be interested in a bill introduced in the United States Senate on February 4 by Senator Hugo LaFayette Black of Alabama. The bill is aimed at radio broadcasting by public utility companies.

Senator Black wants the Radio Act of 1927 amended so as to withhold permits for broadcasting by any public utility corporation or by any corporation any part of whose stock is owned by a public utility corporation or its officers. He would also stop broadcasting by any corporation that is affiliated with a public utility company. The object is apparently to free the air entirely from public utility programs, or from broadcasting that may be even remotely connected with public utility companies.

A statement by Mr. Caldwell, the attorney for the Radio Commission, on the subject of broadcasting by public utility companies, will be of some interest in this connection:—

"The mere fact that a station is owned and operated directly or indirectly by a public utility is not, in the opinion of the Commission, a significant fact in the present state of affairs in the broadcast band. The great majority of broadcasting stations are owned and operated for the purpose of advertising the businesses of those who control the stations. A public utility has as much right to engage in advertising as a hotel, dry-goods store, newspaper, or insurance company. There are a substantial number of stations now successfully operated by public utilities in the various parts of the country, without any complaint reaching the Commission that the facilities have been improperly used. The Commission does not believe that there is any less reason for permitting a public utility to advertise by means of broadcasting than in the columns of newspapers and magazines, and no one has suggested that this was either ultra vires or against public policy."

Senator Black does not expect that his bill to abolish broadcasting by public utility companies will be acted

upon at the present session of Congress; he is merely preparing the way for future discussion and action.

If Congress could enact a valid law of this kind it would have some surprising consequences. Not only would such stations as WBAL in Baltimore, Maryland; WEEI, Boston, Massachusetts; WENR, Chicago, Illinois; WTAM, Cleveland, Ohio; WTBO, Cumberland, Maryland; WFBM, Indianapolis, Indiana; and other stations operated by utility companies be affected, but possibly the great stations operated by the Radio Corporation of America. The Radio Corporation sends code messages for pay, and this activity is regarded as a public utility. Some persons think that radio broadcasting is itself public utility service. If so, a radio broadcasting station would be a public utility, and consequently all broadcasting would be prohibited. Of course Senator Black does not intend to prevent broadcasting altogether, and the chances are that broadcasting would not be interpreted as a public utility service within the meaning of the proposed law.

The most interesting question presented by the proposal to enact such a law, however, is whether Congress has any power to do so. This is an attempt to prohibit free speech over the air, by denying the right to a specified class of individuals. It is hard to believe that such a thing would even be attempted in America. We would be very much astonished if it could be done. Irrespective of the Constitutional provision covering the subject, we do not believe the people would tolerate it.

A Novel Method of Establishing State-Wide Promotional Domestic Rates

WHAT this country needs, to paraphrase the famous remark of the late Vice-President Thomas R. Marshall, appears to be "a good 5-cent kilowatt hour." This is needed for the house-owner who cares to take advantage of the countless number of heavy-duty appliances on the market today. In step with the national agitation for promotional rates to stimulate consumption through the creation of attractive rates for such appliances, the Georgia Commission has announced one of the most sweeping revisions of this character.

Due to rather fortunate local conditions, Georgia is in a position to have equal and uniform domestic rates over the entire state. This has been brought about by the merging of electric properties into an inseparably connected system in urban and interurban communities alike. The Commission has ruled that this situation removes the justification of lower rates to large populous centers as compared with thinly populated communities. The same schedule of residential rates was applied to all such customers alike throughout the state. The aims and purposes of the new Georgia schedule are very modern. The details of the rates are very simple and will probably serve as a model for other Commissions in the future.

About the most important feature of the new rate is the service charge which is calculated to defray the cost

of distribution regardless of use of current. For meters of ten amperes or less the service charge is $1.11 a month; for meters over ten amperes the service charge will be $2.22 plus the service charge, plus an energy charge of 5.55 cents for the first 50 kilowatt hours a month, 3.33 cents for the next 150 kilowatt hours a month, and 2.22 cents for all over 200 kilowatt hours a month. Clearly this should encourage use of appliances.

Re Georgia Power Co. No. 16865, Dec. 22, 1928.

The Price of Progress

GENERAL economic considerations seem to be playing more of a part in the deliberations of the Commissions every day. It is a serious and important problem—the adjustment of the fundamental industries in the states. The latest solution of this problem comes from the Utah Commission.

For years an interesting and delicate situation has prevailed in the state of Utah. Soft coal mining is probably one of the greatest industries of the state. The total expense of coal mining operations for the year 1927 in Utah was $8,599,764.95. The annual output of the mines is approximately five million tons. Small towns and communities have grown up and large business industries established, mainly dependent for their existence and future growth upon the coal mining industry. Farming in eastern Utah is largely dependent on the coal camps of Carbon county for the marketing of their products. Fifty-four per cent of the freight handled by the Denver & Rio Grande Western Railroad Company, operating its main line between Denver and Salt Lake City consists of coal and the company has expended approximately $15,000,000 or more in tracks and equipment for the exclusive use of coal traffic over its various steam roads.

Now here is the problem. Before the Utah Commission, in the face of this gigantic coal industry, there were recent applications made for permission to serve natural gas for all purposes in a certain section of the state. The territory proposed to be served with natural gas contained within its confines approximately one-half of the population of the entire state. The use of raw coal as a fuel is rendering living conditions in the thickly populated centers of Utah almost intolerable, especially so in the cities of Salt Lake and Ogden. The smoke clouds in these cities at times becomes a general nuisance and it is a serious matter for the health of the people. For years there has been a concerted effort to do away with these conditions with no apparent result. Obviously relief is not to be obtained without the change from raw coal to a smokeless fuel of some kind.

The Utah Commission after requiring the applicant to submit to its jurisdiction for the control of local distributing plants and to make contracts safeguarding the future reasonableness of rates granted the authority sought. There was some evidence that the local coal could be so treated as to produce a smokeless fuel. The

Commission stated that it had no reason to doubt but that such results might be accomplished in the future, but the difficulty was said to lie in the fact that the smokeless fuel was an absolute necessity at the time and that none was available for general use at a reasonable price except natural gas.

The Commission further stated:

> "The introduction of natural gas into Utah, to be used as a fuel for all purposes, and the consequential displacement of Utah coal as a universal fuel, will of necessity be attended with some economic disturbances and result for a time at least in financial losses to the private interests engaged in the well established coal producing industry. Such is always the price of progress, to be paid in passing from the old to new and better things. Magnanimously, the coal producers of this state have come into the open and stated to this Commission and for the benefit of the record in this case, that they are not opposed to the introduction of natural gas into Utah, if it be found that its use will benefit the public and promote the general welfare of the state."

Business is not always selfish.

Re Ogden Gas Co., Cases Nos. 1060, 1061, 1066.

Objects to the Serenade of Railway Wheels

MADISON Maginn lives in Chicago near the tracks of the Chicago Rapid Transit Company. Apparently Mr. Maginn likes to sleep, and sleep soundly, but the noises emanating from the wheels of the railway coaches have seriously interfered with the rest and peace of mind of Mr. Maginn. He felt so deeply about the subject that he investigated and found that there was in existence a patent car wheel of such a type and style as would eliminate all excessive and unnecessary noises. Mr. Maginn complained to the Illinois Commission, charging that the clamor of the passing cars was a great inconvenience to the general public and tended to injure the health and interfere with the comfort of all persons residing in, or engaged in business in, the vicinity of the tracks. Just another one of Chicago's "rackets."

The Commission felt that it did not have jurisdiction to compel the company to install the type of car wheel which alone would meet the standard asked by the complainant. The opinion states:

> "It further appears to the Commission that the general trend of the decisions of the courts has been that the regulatory bodies of the respective states do not have the power to act upon those things which appear to be entirely within the discretion of the managing officers or the Boards of Directors of the respective public utilities and that the Commissions are acting beyond their jurisdiction, if an effort is made to substitute themselves for such boards of directors."

Maginn *v.* Chicago Rapid Transit Co., No. 14125.

The Legal Rights of Foreign Owners of Public Utility Stocks

MR. Bernardo, who used to run a bus line between Red Bluff and Chico and intermediate points, has asked the California Commission for authority to sell the business to the Southern Pacific Transport Company.

A competing bus line objected to the transfer on the ground that the capital stock of the purchasing company was held almost entirely by a foreign corporation. It was argued that since such a foreign corporation could not itself be granted authority, that any attempt by the parent company to operate stages by indirection to its subsidiary was unlawful. The Commission failed to take this view of the situation, and refused to disregard the corporate entity of the local company. The transfer was permitted.

Re Bernardo, Decision No. 20459, Application No. 14974.

The Revocation of Consent by Town Council Is Unlawful

LAST August the New Jersey Board approved the application of the Public Service Transportation Company in New Jersey to operate seven busses between and including Secaucus and Weehawken. Shortly after, the town council of the town of Secaucus decided that it did not like the kind of service proposed and passed a resolution revoking and rescinding the municipal consent, which had been previously given by it to the company. When the Board heard about this, it held the revocation by the town council as unlawful whereupon the whole matter was appealed to the supreme court of New Jersey. The supreme court decided that the New Jersey Board was right in holding the action of the town council unlawful. In view of the fact that it was done without notice and hearing and without the approval of the Board as required by the law of that state. This will insure stability of local commerce.

Hudson County Bus Owners' Asso. *v.* Public Utility Comm'rs, No. 262, — N. J. —, 143 Atl. 755.

Selective Stop Plan Disapproved

A RATHER novel plan by the citizens and other users of the East Washington street car line of the Indianapolis Street Railway Company has been disapproved by Commissioner Ellis of the Indiana Commission. It appears that service on the East Washington street line should be speeded up, and the plan was to apportion the cars running along that route as nearly as possible into three equal groups. Each car in any group was to be marked with a separate emblem on the front and side, such as a red diamond for the first group, a green oblong for the second group, and a black circle for the third group. Then, a post at each stop along the route was to be marked with one of such emblems in exact rotation. According to this plan in order for any one to get off at a stop marked by any one of these emblems, he should board a car marked with that emblem, but he might board a car bearing either of the other emblems and get off one stop either west or east of his own stop. For the convenience of strangers the plan proposed that a map of the line showing the allocation of the emblems to the respective street crossings should be placed at each stop. Commissioner Ellis was of the opinion that this plan would result in

confusion rather than speeding up the service, and ordered the company to submit, within a specified time, an ordinary skip-stop plan for operation on the East Washington line of the Indianapolis Street Railway Co.

Karns *v.* Indianapolis Street R. Co. No. 9500.

Limitations of the Powers of the Porto Rican Commission

THE Porto Rico Public Service Commission issued an order last spring to the South Porto Rico Sugar Company to appear and show cause why its franchise to take 20,000,000 gallons of water daily from Lake Guanica for irrigation, and for the construction and operation of a private railroad over *quasi* public land, should not be cancelled. The company refused to appear at the hearings but instead filed a bill seeking an injunction from the United States District Court. The application was dismissed. Upon appeal to the Circuit Court of Appeals the lower court decision was affirmed. Circuit Judge Anderson observing that an "order to show cause" by the Commission did not warrant injunctive relief at that point, even assuming that the Porto Rican Commission did not have the authority to cancel the franchise. It was argued that when Congress reserved to itself the right to cancel and appeal such franchises and to annul Porto Rican laws, that the local Commission was thereupon left without jurisdiction, but the Federal Court decided that such reservation of powers by Congress did not necessarily preclude the jurisdiction of the Commission, and it was pointed out that the failure of Congress to disapprove of Porto Rican legislation under which the Commission was acting after being officially informed of it had some tendency to show Congressional approval of the policies adopted by the local government.

South Porto Rico Sugar Co. *v.* Munoz, No. 2271, 28 F. (2d) 820.

No New Union Station for Boston

IN the central part of the city of Boston three railroads have a separate terminal. The New York, New Haven & Hartford Railroad Company maintains a station on Dartmouth street called the Back Bay station. The Boston & Albany Railroad leased by the New York Central each maintain a station near the Back Bay station called the Trinity Place and Huntington avenue stations respectively. Last April the Back Bay station was destroyed by fire, whereupon the mayor of the city filed a petition asking the Massachusetts Department to order the railroads to construct and maintain a single union station instead of permitting the reconstruction of the old Back Bay station. The Department after weighing the relative convenience that would accrue to the general public from a union station as compared with the considerable expense decided that a union station at this time would be unnecessary. It was pointed out that the new

Back Bay station would be built in such a manner as to admit an expansion into a union terminal at any future time with very little additional expense.

Re Mayor of Boston, D. P. U. 3312.

The Legal Ethics of Permitting Local Courts to Decide Local Issues

A CASE went to the Federal Court from the Galveston district a few weeks ago; it involved a point in dispute between the city and the Texas Cities Gas Company. In a footnote to the opinion (which was against the company), this statement appears:

> "The judges of the several Districts Courts of Galveston county, having recused themselves on account of being prospective users of natural gas, and the entire Galveston Bar being likewise subject to the same disqualification, the attorneys for the relator and respondent agreed upon Mr. W. S. Hunt of the Houston Bar to try the case as Special Judge."

This shows how judges and lawyers look upon the ethics of deciding questions in which they have a personal interest.

It is different with some of our local authorities. There has been, at times, a spirited controversy over the question whether public utilities should be regulated locally or by State Commissions. The city officials often stand for what they term "home rule," making a strong appeal to local pride. They talk a good deal about the desirability of having all strictly home matters handled by the home folks. There is always a certain amount of resentment to outside "rule."

But the function of the State Commission is not to "rule," but to decide justly between the utilities and their customers.

That is where this little Texas incident comes in. The judges and lawyers did not think it proper to decide a case in which they had a personal interest.

That is one reason why it is better to have a State Commission rather than the local authorities decide controversies between utilities and their customers. The local authorities ought not to have the power to decide questions in which they are personally interested.

There can be no doubt but that the local officers are directly concerned in the outcome of disputes between the utilities and their patrons. They are probably themselves patrons. Suppose a rate question is put up to a city council; every member of that body is probably a ratepayer. If the rates are increased, this will affect to some extent the pocketbooks of the members of the council. Even if it is a simple service question, it may touch them personally. They would be in precisely the same situation as were the judges and the members of the bar of Galveston in the city's controversy with the gas company.

No honest man wants to sit in judgment on his own case. The ratepayers would not like to have a dispute between themselves and a utility corporation decided by the board of

directors of the company. It would be just as unfair to the company to have the controversy decided by the board of directors of the ratepayers; that is to say, by the common council of the city.

If we have to have umpires to decide disputes, we feel a little better about it if the umpires have no personal interest in the controversy. Lawyers and judges regard this as a point of honor.

Who Really Pays the Taxes Levied on a Public Utility Company?

IN a short story, "The Gray Road," a gray-haired woman, in expressing joy to her husband over their prospect of at last becoming the owners of a home of their own after long years of renting, says:

> "Just think! We don't owe a cent in the world and we won't have to pay any more rent; and a week from tonight we will be eating supper in our own, our very own house."
>
> "But taxes, mother. Don't forget that there will be taxes."
>
> "That is different," replied the gray-haired woman; "when we pay taxes we are helping to support our country, but rent—that just goes to some one else."

This is just a bit of fiction to be sure, but nevertheless a true picture of the popular belief about taxes and rent. Many persons think they escape taxation by paying rent. They take little interest in high taxes because they think it is the landlord who pays them. The gray-haired wife reminds her husband that during all the years they had been paying rent they had not been supporting the government. She thought it was the landlord who did that. But, it was they and not the landlord, who had paid the taxes on the house they had lived in.

The same sort of thinking permits taxes to be imposed with impunity on the customers of utility companies, who believe it is the companies and not the consumers who are paying them. Utility company customers have often been an inviting source of tax revenue, because they are not likely to complain so long as the tax is levied in the name of the company. The higher a franchise tax, for example, the better utility customers as a whole seem to enjoy paying it.

Some day, when more attention is paid in the schools to elementary principles of taxation, the attitude of rate payers toward taxes that are ostensibly levied against their companies, may be different.

The landlord and the utility company are usually tax collectors, not tax payers. The burden is always passed on to the ratepayer.

A Public Utility Company Abandons Its Test Case against Rate Reduction

ANNOUNCEMENT has been made of the withdrawal of court proceedings by the Cambridge Electric Light Company, to test the validity of a decision of the Massachusetts Department of Public Utilities in

cutting the maximum rate for electric current from 8 cents to 5½ cents a kilowatt-hour. The Worcester Electric Light Company has a similar case which has attracted nation-wide attention. There is a rumor that this case may also be discontinued.

The popular view of this litigation is that the suits were brought to settle the question whether a utility company is entitled to earn a return on the value of the property, rather than upon the prudent investment in it. The cases were undoubtedly brought, however, not to settle that question, but to obtain what the companies believed to be the benefit of the value rule—a rule which has long been established.

The prudent investment versus value question can be said to be unsettled only on the assumption that the supreme court may reverse itself on that matter.

The Massachusetts Department, following these appeals from its decisions, proposed legislation requiring utility companies in that state to enter into a contractual relation with the Commonwealth, waiving their rights under the value rule established by the supreme court. If, as a result of the withdrawal of these cases from the Federal Courts, the bills are allowed to die, a very interesting and important legal question, which was sure to emerge as the result of favorable legislative action on the Department's recommendation, will remain undecided; that is, the power of a state, by legislation of the kind suggested, to avoid the rule of constitutional law as to confiscation of property in the regulation of its utilities.

The Last of the Coin-in-the-Slot Gas Meters

THE old picturesque quarter-in-the-slot gas meter seems destined to follow the horse car into oblivion. The Georgia Commission has sounded the death knell of such meters in that state after considerable comment on its shortcomings. The Commission said:

> "Another class of service, if not out of date, is fast becoming so, is the service provided through prepay meters. This is one of the most expensive gas services rendered the public. That is, it is expensive to the consuming public, because of extra and useless cost in performing the service which in the end must be borne by the public. Five years ago there were approximately 13,000 prepay meters in use by the gas consuming public in Atlanta. Today there are less than 4,000 prepay meters in use. It is impossible to continue gas service through prepay meters, if the rates herein provided for are to be applied without discrimination, unless an arbitrarily high flat rate should be fixed for this class of service, which would not be satisfactory, neither would it work for economy for those desiring such service. If the prepay meters were to be continued, under the new rates, it would result in the small users of this service receiving gas for less than actual cost, resulting in rank discrimination. To the extent that such discrimination would be reflected in the cost of the service to the larger consumers, it would mean that those of the larger consumers would have to pay a loss sustained on the prepay meter customers. It, therefore, follows that it is imperatively necessary that all prepay

meters be displaced by the company as speedily as possible, straight meters being substituted therefor, the cost of all which shall be borne by the company, without the right on the part of the company to require the usual deposit against loss. This is necessary if the gas consuming public throughout the territory served by the company, as a whole, are to be put on absolute equality, hence the necessity of ordering the removal of all prepay meters."

The elimination of discriminatory rates, especially if in favor of small consumers, has been a difficult task, but in the case of these prepay meters it seems to have been accomplished, at least in Georgia.

Re Georgia Power Co. File No. 16866.

Discrimination Against Unfriendly Customers

THE Colorado Central Power Company has a rule that requires a deposit of $10 for new business customers in order to secure payment of future bills.

It appears that in the town of Platteville, there was a business partnership known as Ottinger and Bennett operating a pool hall. Not long ago Mr. Bennett desired to withdraw from the firm and it was up to Mr. Ottinger to secure a new contract with the company. The company asked the regular deposit of $10 because Ottinger was a new customer on its books.

Mr. Ottinger failed to see why he should deposit $10 for the privilege of continuing electric service to his pool hall and told the company so. The district manager for the company, on the other hand, failed to be impressed with the financial responsibility of Mr. Ottinger and required not only $10 but $24 on an estimated 90-day bill "because of the apparent antagonism which Ottinger bore to the company."

The Colorado Commission disposed of the complaint by ruling that, while the deposit of $10 was properly required, the demand for an additional sum was an unreasonable discrimination against Mr. Ottinger.

Ottinger *v.* Colorado Central Power Co. Case No. 368, Decision No. 2018.

A State Commission Asks Federal Authorities Not to Interfere

THE Public Service Commission of West Virginia has filed a memorandum with the Federal Power Commission informing it of the grant by the former of authority to the New-Kanawha Power Company with respect to the proposed development of the hydroelectric power on the New river between Hawks Nest and Gauley Junction. The memorandum pointed out that the waters to be affected were of themselves not navigable and that the proposed development would not affect the navigability of any other stream used and useful in intrastate, interstate, or foreign commerce. The West Virginia Commission respectfully urged that full faith and credit be accorded this exercise of state jurisdiction and requested the Federal Commission not to undertake to assume jurisdiction over the project.

Re New-Kanawha Power Co.

"PRESENT COSTS"

The economic reasons for emphasizing this important factor when making valuations of public utilities' plants—an item on which the regulation of rates is based.

By HARRY GUNNISON BROWN

PROFESSOR OF ECONOMICS, UNIVERSITY OF MISSOURI

EVER since the regulation of public utility rates was first seriously attempted, the problem of public utility valuation has been a vital one.

If valuation is, just at present, even more than usually a subject of controversy, this is because of the recent great changes in the average of prices or (otherwise expressed), the great changes in the purchasing power of the dollar. These changes have led to sharp clashes of interest. For when dollars are becoming constantly more valuable (increasing in purchasing power), the public which patronizes the public utilities, very naturally feels that fewer of these more valuable dollars should suffice for public utility security owners and that rates should be reduced. Yet the security owners hope for just as many dollars income on their property despite the greater value of each dollar.

On the other hand, when dollars become of greatly less value (as during and immediately after the World War), the patrons of the utilities are inclined to feel that security owners should nevertheless be satisfied with no more dollars than before and that rates should be kept down; while the security owners insistently urge rate readjustment on the basis of the new conditions.

IN the various jockeyings for position in this controversy, one old, conservative contention seems to have been, at least temporarily, abandoned, *i. e.*; the contention that charges should not be regulated so as to yield less than the current per cent return measured on a *market value* of securities, when the securities are high in value just because charges for service have been exorbitant. The contention amounted to the claim that charges must be permitted high enough always to avoid lowering the salable value of securities, that because the public have been compelled to pay unreasonably high rates in the past and are paying unreasonably high rates now, and security values have changed hands on this expectation, therefore, it is reasonable and essential that the rates remain high. This is really a doctrine of "vested rights," the last recourse of the defenders of slav-

ery and all other evil economic institutions.

Without denying that circumstances may sometimes make desirable a bit of gradualness in the process of reform, we may still contend that much is gained when "vested rights" in the maintenance of exploiting conditions cease to be taken too seriously.

THE controversy at present before the public is between two views of valuation, which may be called, roughly, the "prudent-investment theory" and the "reproduction-minus-depreciation - and - obsolescence theory."

Adherents of the prudent-investment theory believe in valuation on the basis of construction cost at the time the plant of a utility actually was constructed. But they are not willing to be guided solely by the historical evidence as to how much actually was spent to construct the electric light or gas plant, railroad, or street-car company. For, it is claimed, money may have been expended in construction improperly or with inexcusable unwisdom. The formula is, therefore, "the amount actually, honestly, and prudently invested." With the qualifications here indicated, however, and with due allowance for depreciation, the emphasis is wholly upon actual construction cost in dollars regardless of what the dollars are now worth.

Thus (to assume an extreme case), if the United States should indulge in such paper money inflation as did certain European countries during and just after the World War, so that (say) prices should rise ten million fold and $100,000 be required to buy a pencil or a piece of candy such as now sells for a cent, the advocates of the prudent-investment basis would, if consistent, have to argue for rates yielding about the same return in dollars as before. They would have to argue, for example, that the earnings of an electric lighting system which cost $10,000,000 to build when prices were low, should yield to its owners only some $500,000 or $700,000, having a purchasing power, compared to the former money value, of only 5 or 7 cents!

ON the other hand, the view of those who stress reproduction cost needs, also, some explanation.

The advocates of this view do not contend that a railway or other plant should be valued at what it would now cost to duplicate, precisely, that plant. The plant may be greatly depreciated. The equipment to be valued may be largely obsolete. What is contended is, rather, that the rates permitted should be high enough to allow a reasonable per cent return on what it would now cost to construct a plant capable of rendering the desired service. Such rates should, of course, permit the maintenance of a reserve for depreciation and obsolescence. But a company which has maintained no such reserve and which has permitted its plant to become obsolete and which, because of the high cost of operating a depreciated and obsolete plant, cannot make a good income on rates which would be otherwise reasonable, ought not, for any such reason, to be allowed to charge rates any higher. With these qualifications, this view of valuation is based almost altogether on present

cost,* on cost of reproduction. In this view, a rise in the dollar cost of plant construction, due to cheapening of the dollar, would lead to a higher valuation of plant in terms of dollars and the privilege of earning a return on that higher value. Likewise, a fall in the dollar cost of plant construction would inevitably lead to a lower valuation of plant in terms of dollars and a regulation of charges so as to yield a reasonable return (assuming reasonably efficient operation, and not, of course, a guaranteed return) on such lower value.

Which view is the right one?

THE second has, at least, the merit of approximating the conditions in those industries subject to competition.

If I have built a shoe factory several years ago and a process of inflation has caused prices to rise ten-fold, the fact that I built when prices were low will not compel me to accept a low price for the shoes. All new competitors must build on the basis of the present price level. None of them will build except on the expectation of reasonable returns on the present cost of construction. If returns are less, possible new competitors will presumably stay out. Meanwhile, the increased money in circulation will express itself in a demand that favors high prices of shoes as of other things.

But if, on the other hand, prices, including construction costs, have greatly fallen since I built my factory, I cannot expect to keep charging a high price for my shoes. Would-be competitors can build factories on the new and lower price level. If shoe prices should be yielding exceptionally large returns in relation to present construction costs, a rush of competition would probably soon bring these returns down to the current rate on present, as distinguished from the higher past construction costs.

AFTER all, it might be asked, why do we undertake to regulate the rates of the public service industries? Is it not that we wish regulation to do for us, in these industries, what competition does for us in others? If so, what better plan is there than to see to it that public service industries be allowed rates which will produce no larger per cent average profits and no smaller per cent profits than do such other industries, reckoned on the basis of present construction costs on which, in competitive industries, competition makes the latters' earnings depend?

But let us look at the problem not merely as a matter of consistency; let us look at it from the viewpoint of probable consequences. And first let us look at it from the point of view of the burden of utility rates on the rate-paying public.

When prices in general have doubled; when manufacturers, on the average, are getting twice as much per unit of output; when mine operators, lumbermen, laborers, and others

* Obviously, the principle must be applied in a common-sense manner. Thus, if gas mains and water pipes can as well be laid underground before roads and sidewalks are concreted, they are not to be valued, the day after the sidewalks are done, at what it would then cost to tear up the concrete (if directly over the mains), lay the mains, and restore the concrete. It is impossible, in this short article, to meet every trifling suggestion or to discuss every kind of borderline case.

Two Theories of Valuation—

1. *The* "REPRODUCTION COSTS" *theory:*

> The advocates of this theory of public utility valuation contend that the rates permitted should be high enough to allow a reasonable per cent of return on the money that would now be required to construct a plant capable of rendering the desired service; they do NOT contend that the plant should be valued at what would now be needed to duplicate the plant precisely.

2. *The* "PRUDENT INVESTMENT" *theory:*

> The advocates of this theory believe in a valuation on the basis of construction cost at the time the plant of a public utility was actually built; they do NOT contend, however, that these costs should include improper expenditures for construction or money spent unwisely or with inexcusable prodigality.

are receiving twice as much for the goods and labor they sell; when real estate owners are securing doubled rents, and similarly for persons in various other ventures, then doubled rates for gas, electric light, water and transportation are really not a heavier burden to the public than lower rates were when prices in general were lower.

A 10-cent trolley-car fare to work, paid by a laborer whose wages are $10 a day, requires no more time for him to earn than a 5-cent fare when wages are $5. A rate of 30 cents a bushel to carry wheat from farm to market, when wheat is $1.40 per bushel, requires no larger per cent of the crop to pay for transportation than does a rate of 15 cents when wheat is selling at 75 cents a bushel.

Not only is it true, then, that, with doubled prices, it takes twice as many dollars as before to give utility owners the same income measured in real purchasing power, but it is also true that twice as many dollars constitute, in such circumstances, not one whit greater burden on the public.

STILL, there is a tremendously strong popular movement, at the present time, when prices are a good deal above the pre-war level, in favor of basing rates for all utilities constructed before the war, on valuations at pre-war prices. And persons who think of themselves as "liberals," at least the most vocal among them, appear largely to support this movement.

Although there seems to have been, in this matter, a fairly complete change of front by the group calling itself "liberal" or "progressive," since pre-war days, let us not, on that account, question the sincerity and intent to be consistent, of this group. Let us assume, rather, that all those who are now insisting on actual prudent investment in dollars, would consistently hold the same view if prices were to fall greatly or if they had fallen instead of rising. For although there is growing advocacy of measures for price-level stabilization, there is as yet no certainty that any effective measures looking to that end will be adopted. And if they are not, it

is entirely possible that the next few decades will see such a lowering of average prices as marked the three decades following the civil war. Indeed, there might conceivably be a more prolonged and more rapid fall of prices.

What if our so-called "liberals" should succeed by the force of propaganda, of political pressure, and of "educating" the courts, in establishing "prudent investment" as the accepted basis of valuation?

It is important to consider this possibility, for an implied understanding that valuation should be on the basis of historical cost rather than contemporary cost, in order that present rates should be kept down notwithstanding the small burden involved in higher rates when prices in general are high, might turn out to be, for the consuming public, a most unfortunate understanding.

UNDER these circumstances, then, let prices begin to fall, as I have above suggested that they might and as not a few economists, particularly in Europe, fear that they will.* New utilities are constructed in growing towns, at present price levels. Valuations are fixed at those price levels. After fifteen or twenty years have passed it would be possible to construct new plants at much lower cost. Yet towns, cities, and states are to be estopped from either constructing or allowing to be constructed such new plants or from fixing rates charged by existing plants on the level at which new plants could profitably supply the service to their customers.

Thus, should prices fall greatly in the next thirty years, a city in which public service plants are now being installed at present price levels would then be at a disadvantage as compared with new and rival cities which could base rates on the then lower construction costs. Thus, the latter cities would perhaps grow at the expense of the former, even though the former should have somewhat better natural advantages. This would involve, obviously, economic waste. The former cities might lose some of their industries, even though naturally better adapted for them, because of higher rates for light, power, etc., and this just because these cities were already provided with light and power plants!

TRADE, too, would be partially throttled. Traffic between two cities, which was well able to pay more than its moving costs, including current per cent returns on contemporary cost of railway construction, and more, might nevertheless, in many cases, be prevented and the advantages of geographical specialization be lost, because of the insistence on rates to yield a return on an earlier and higher cost.*

Meanwhile, with the general price level falling and with incomes generally lower, public service rates calculated to yield the same incomes as before to utility security owners would be a relatively heavy burden on the consuming public.

* See an article by Lionel D. Edie on "An International Viewpoint on Commodity Prices—Long Decline in Prospect," in *The Annalist*, Nov. 16, 1928.

* For the higher rates, even though preventing a great deal—not all—of traffic, might yet yield profitable returns on the earlier and higher cost when the lower rates would not yield so much.

Shall we adopt a principle of rate making according to which we prevent proportionate increases of rates when, with rising prices, the real burden on the public would not thereby be increased, and according to which, therefore, the public fails to secure proportionate decreases of rates when, with falling prices, the permitted high rates must become a progressively heavier real burden? If we could really free our minds from the passion and prejudice of current clashing interests, with their concomitant charges and counter charges, and look at the matter solely from the viewpoint of intelligent, long-run public policy, would not such a principle of rate making seem to us hopelessly inept?

BUT now we are told that public utility rates must not be reduced proportionately when general prices fall, because the relations between bondholders and stockholders are such that the latter would suffer a disproportionate reduction of incomes and might be wiped out through bankruptcy.

To illustrate:

A utility (say a railroad or a power and distributing plant) is constructed at a cost of $200,000,000 of which half is raised by the sale of bonds and half by the sale of stock. The bond interest is 5 per cent. The earnings of the company on the entire $200,000,000 are 6 per cent, or $12,000,000, leaving a return, after the bondholders have received their agreed interest of 7 per cent on the $100,000,000 capital stock.

But the general price level falls one half and utility rates are lowered in the same degree. The bondholders will still receive their $5,000,000 per year although, with prices halved, this means a doubling in their real income measured in goods. The stockholders, however, since the yield has been reduced from $12,000,000 to $6,000,000 and since $5,000,000 must go to the bondholders who have a prior claim, now receive only $1,000,000 a year instead of the previous $7,000,000.

It is easy to see that any considerable further fall of prices and of rates would lead to bankruptcy and receivership. Reorganization might then wipe out the debt or a part of it and give control to those who had been bondholders.

ALL this is true enough,—and doubtless bad enough. But it is not confined to the public service industries.

When the quantity of circulating medium decreases in relation to business (perhaps merely fails to keep up with increasing business), the average of prices normally falls in competitive industries. The public simply cannot buy goods, in the volume offered, except as prices do fall, and competition forces them downward. At such times, bondholders of industries generally, and not merely of regulated industries, profit at the expense of stockholders, lenders at the expense of borrowers.

Thus, for example, is explained, in large part, the discontent of American farmers during the decades from 1865 to 1896, when, with falling prices, their debts were so hard to pay; while the lenders were receiving money of greater purchasing power

than the money they had lent. With prices falling, the bondholders or mortgage holders of competitive industries also, receive a disproportionate part of the industries' total income and in these industries too, bankruptcies and foreclosures are common.

Shall we, when prices in general fall, put our public utility stockholders in a preferred position as compared with stockholders of other industries and as compared to mortgaged farmers, mortgage-burdened home-owning workmen and others?

Shall we compel these latter groups to pay rates for public service, high enough to yield the ordinary per cent return on the original investment in public utilities, when their own incomes, on the average, are reduced about in proportion to the fall in the price level and when it would be possible to construct anew the plants of these utilities at a cost low enough to justify correspondingly low rates for their service?

How largely shall we be thus governed by a "dead hand" of the values of a past generation?

THE truth is that we have here an evil—the evil of a fluctuating average of prices, which is general in its nature. Its consequences apply not alone to the public service industries. To relieve of its effects the stockholders of these industries, while their bondholders continue to profit therefrom with the increasing purchasing power of their receipts, would be to impose upon the rest of the public a burden which might well be regarded as unfair.

What is needed, for all industries, is a policy of so stabilizing our monetary and banking system as to obviate, for all time, these extreme changes in the purchasing power of the dollar. When will those who selfishly seek relief for their own special groups at the expense of others, whether through tariff favors, government-aided dumping abroad of "surplus" crops so as to make the domestic supply scarce and the domestic price high, or partiality towards public utility stockholders or towards patrons—when will all these get together, unselfishly and sanely, on a general remedy for a general economic sickness?

BUT suppose the price level greatly rises as, since pre-war days, it has done. May it not then be argued that a proportionate rise in rates is unnecessary, on the ground that the returns to bondholders are fixed anyhow, by contract, so that no matter how much rates go up the bondholders will receive only the same number of dollars as before and a smaller purchasing power, and on the ground that, in these circumstances, a less than proportionate rise of rates will secure to stockholders an adequate income?

Indeed, just this argument is nowadays sometimes advanced. But here, also, it can be pointed out that in competitive industries we find the same evil so far as bondholders are concerned, *viz.*, that when prices rise bondholders receive no more money and thus really lose in terms of goods, while stockholders gain at their expense.

Why try to hold the stockholders of public utilities alone, to a specially limited return, when the rates charged

are not unreasonable and when the stockholders are not profiting at the expense of the users of the service but rather at the expense of their own companies' bondholders? It is these bondholders, in this situation, and not the consuming public, who are really entitled to relief. Why not remedy the real evil, if any remedy is to be found, and not, while ignoring it, fuss and fume about the interests of a group of people who are not being exploited?

Why not, at any rate, get together on a plan of price-level stabilization which will prevent the recurrence of present evils?

FURTHERMORE, there is a most serious difficulty in any plan to keep down rates so as to provide only the fixed return to bondholders plus a so-called "fair" return on the present value of stockholders' original proportionate investment.

To illustrate:

Suppose there are two competing railway lines, each built at an original cost of $200,000,000. In the case of one, bondholders contributed $150,000,000 of the total and stockholders $50,000,000. In the case of the other, there are no bondholders at all. Prices then double.

Shall we permit, for road A, only the agreed return to the bondholders, say 5 per cent or $7,500,000, plus a return to the stockholders on twice the $50,000,000 originally contributed by them, say 6 per cent of $100,000,000 or $6,000,000, making a total to security owners of $13,500,000?

And shall we then permit a return in the case of the other railroad, in which the stockholders put the entire $200,000,000, of (say) 6 per cent on $400,000,000 or $24,000,000 a year?

If so, and if the two railroads serve the same places, by what legerdemain shall all this be managed?

Even the present recapture clause, which is, in the writer's opinion, of most doubtful wisdom, does not attempt so difficult and complicated a task as this, and certainly to try to accomplish a solution by rate regulation would be preposterous.

AGAIN, if the stockholders of a railroad or other public utility company, such as the one where they were supposed to put in $50,000,000 as compared with the bondholders' $150,000,000 and where, prices having doubled, reproduction cost will be $400,000,000—if these stockholders know that they are to be permitted a rate to yield the bondholders' interest plus a return to the stockholders on $100,000,000 but on no more, have the stockholders any adequate motive for keeping up the value of the entire plant, as prices double, above the allowed total valuation of $250,000,000?*

BUT let us return to the proposal that rates be based on "prudent investment," on what construction costs *have been* in the past. Such an arrangement may involve some awk-

* But if, say through some intricate system of taxation or some not-yet-projected system of "recapture," it should seem desirable and feasible to take from stockholders a large slice of their gains from bondholders due to rising prices, while yet making no compensation for stockholders' losses should prices fall; there would appear to be equally good reason for taxing bondholders' gains at stockholders' expense during falling prices, consequent on and measured by the increased purchasing power of the bondholders' interest.

ward consequences not yet considered in our discussion.

Let us suppose that a single railroad has been constructed, some years back, between cities A and B. These cities, along with some of the intermediate towns, grow and thrive. The traffic becomes too great for this railroad to handle. Meanwhile, however, prices have risen 100 per cent and the dollar cost of construction of new plant is doubled.

If rates between A and B are to be kept at a level to make returns only on the old valuation, no new construction will be profitable and traffic will be stifled for lack of trackage facilities. If, then, all the freight offered cannot be handled, which freight and whose freight shall be preferred?

What shippers shall be discriminated against? Will not the specially privileged shippers derive an unreasonable and monopoly profit?

If a new railroad line should be constructed by a somewhat different route, but yet largely competitive with the first, on the promise that the second might charge rates yielding a return on contemporary cost, while yet the first railroad was allowed only a return on past cost, the shippers over the first (which could not carry all the traffic) would profit unfairly by comparison with those who must ship over the second.

WHAT escape is there from evils like these, unless large emphasis is given, in valuation for rate-making purposes, to a consideration of what it would contemporaneously cost to construct a plant capable of rendering the desired service?

But how about the unearned increment of land values?

Often enough the enjoyment of such an increment is made an argument in favor of holding down the rates of railroads. Yet the case for regulation along this line is far from convincing. For not only is such regulation an uneconomic discrimination against the railroads—or other public service industries—but it fails to deal in any very satisfactory way with the very problem of the unearned increment itself.* It is an uneconomic discrimination against the railroads because it says, in effect, that if land is used for agriculture, forestry, merchandizing, manufacturing, or mining, or, even, is held out of use altogether, an unearned increment may be enjoyed by the owners; yet if the land is used for railroad right of way and terminals, such an increment shall not be enjoyed. Such a policy might easily operate, by causing people to prefer the other and favored uses of land, in the direction of retarding needed development of railway or other public utility service. And, in any case, the policy would give only a small part of the unearned increment of the land of the country to favored groups of persons, and not to the public generally.

THE situation rent of land, as distinguished from the return on man-made improvements, is not a product of individual energy and thrift. It is, indeed, an income individually unearned, due rather to

*For a more extended discussion of this problem and, indeed, of several problems considered in this paper, see the author's book, *Economic Science and the Common Welfare*, 4th edition, Columbia, Mo. (Lucas Brothers), 1929, Part I, Chapter VII.

community growth and development. To take it, or most of it, in taxation to supply public needs, and correspondingly to relieve enterprise and thrift from tax burdens, would be highly desirable. Such a policy would not involve, as present taxes largely do, a considerable penalty on enterprise and on thrift. If the annual rental value of railway land (for example) were thus largely appropriated for public purposes, along with the situation rent of other land, this would not discourage railroad building. The railroads, and the other public utilities, have tremendous investments in improvements. Though the value of their sites and rights-of-way were heavily taxed, this might and, in many cases, would mean a real reduction in their taxes if accompanied by removal of taxes on their structures, equipment, and other such capital.

That an income not due to enterprise, effort, and capital construction should bear the heavier tax burden rather than incomes which are so due, would seem reasonable enough from the viewpoint of all constructive business, if we would but free ourselves from our hide-bound conservatism. And a general understanding of this matter of community-produced land or site values, along with a determination to more nearly stabilize our general price level, would do a great deal to make more sane the discussion of the complicated problem of public utility rates.

To prevent a discrimination against the public utilities, which springs from popular confusion and ignorance in the matter of these two needed general reforms, perhaps no group of persons should have a keener interest concerning the promotion of a popular understanding of them than the owners of public utility securities. Yet how many of these owners, instinctively and irrationally conservative, are found always on the anti side of sane progressive economic legislation!

Business Regards a "National Water Power Policy"

IN the next number of PUBLIC UTILITIES FORTNIGHTLY*—out March 21st—the president of the Chamber of Commerce of the United States, Mr. William Butterworth, tells how the business men of this country are approaching this problem which is becoming of increasing moment to our industries as a whole, and which has a very direct bearing upon the future of public utility enterprises.*

Remarkable Remarks

A woman passenger in a crowded street car.

"I wish that good-looking man would give me his seat." (Five men got up.)

MARTIN J. INSULL
President, Middle West Utilities Company.

"There may have been water once in utility stocks. There was water in the early railroads, too. But it has all been squeezed out."

WILLIAM A. PRENDERGAST
Chairman, Public Service Commission of New York.

"The municipal administrators who are fighting the utilities in many cases are overlooking obvious facts because they are looking out for their own personal ambitions."

JOHN F. GILCHRIST
Vice-president, the Commonwealth Edison Company, Chicago.

"Telling the public what electrical and other utility services will do for the people of the country, and telling them continuously, is as much a part of the service which should be rendered by public utilities as the actual supplying to electricity, gas, or transportation."

OWEN D. YOUNG
Chairman of the Board, General Electric Company.

"From the standpoint of the community we could better afford to buy private lots on Fifth avenue and raze the buildings for parking spaces rather than have our streets cluttered as they now are in the congested communities of the country."

THOMAS A. EDISON
Inventor.

"By no stretch of the imagination can the inhabitants of Rhode Island, Massachusetts, Connecticut, New Jersey, Ohio, Indiana, Delaware, Maryland, Florida, Mississippi, or Louisiana, for example, enjoy any material advantage from water power because these states possess no undeveloped water powers of any consequence."

WALTER M. HARRISON
President, American Society of Newspaper Editors.

"There are probably 14,000,000 utility customers, investors and employes in the United States. Activities of these groups, the facts about the business units are legitimate news which editors are looking for."

COL. GEORGE T. BUCKINGHAM
Vice-president, Illinois Power and Light Corporation.

"It does not make the slightest difference in practice whether every share in a corporation votes, or whether only a few shares at the pyramid top vote. The result is exactly the same."

TOM P. WALKER
Vice-president, the Virginia Electric and Power Company.

"The streets originally were dedicated for the purpose of allowing persons and vehicles to travel conveniently between distant parts of the city. Now we find at least half and sometimes more than half of our most valuable downtown city arteries used only as garages for temporarily abandoned automobiles."

RUSSELL KENT
President, National Press Club, Washington, D. C.

"Wealth in this country is getting to be quite respectable."

WILLIAM E. BORAH
United States Senator from Idaho.

"It is a sound rule that the government should not undertake to do what the citizen can do equally well or better for himself. It is very generally recognized as a wise rule that the interests of society are best served by leaving the use and control of property to the initiative, judgment, and discretion of the owner."

JAMES J. DAVIS
U. S. Secretary of Labor

"I do not believe the people of this country are opposed to consolidations of business when these consolidations have for their purpose the elimination of waste, of costly competitive selling agencies, of unnecessary overhead—all of which eventually come out of the pocket of the consumer."

MATTHEW S. SLOAN
President, the New York Edison Company.

"The electrical generating stations of the country have a capacity of approximately 33 million horse power. That is equivalent to the work of 350 million men."

HENRY L. MENCKEN
Editor, "The American Mercury."

"The streets belong to the busy man, not the lazy and luxurious few. It seems as insane to allow parking on main thoroughfares as it would be to permit people to keep lions in their back yards."

GIFFORD PINCHOT
Ex-Governor of Pennsylvania, (in referring to the Federal Trade Commission's investigation of the utility companies).

"It can, if it will, ascertain and tell the people in detail exactly how much water they are paying interest on when they pay their electric bills, and out of just how many hundreds of millions they are being mulcted each year in unjust rates."

PHILIP H. GADSDEN
Vice-president, the United Gas Improvement Company.

"Digging in the ruins of ancient Carthage, explorers found the claim of a Punic advertiser that 'our lamps are the best made in Carthage.'"

A manufacturer of electrical apparatus

"Anyone who does the work that a little electric motor can do is working for three cents an hour"

A. Bourke Cocoran
Manager, the Electric Association of Chicago.

"Ten per cent of all passengers carried on the electric railroads of the United States are carried within this comparatively small (Chicago) area."

P. O. Knight, Jr.
Lawyer.

"Florida invites capital into the state and protects it after it is invested, instead of tomahawking and butchering it."

John T. Sprague
An English commentator (in 1883).

"Neither Mr. Edison nor anyone else can ever ride the well-known laws of nature, and when he is made to say that the same wire which brings you light will also bring you power and heat, there is no difficulty in seeing that more is promised than can possibly be performed. The talk about cooking food by heat derived from electricity is absurd."

Prof. Sylvanus P. Thompson
A London economist (in 1883).

"I think that any system of electric lighting depending on incandescence will utterly fail from an economic point of view and will be the more uneconomic the more the light is subdivided."

James F. Pollard
Of the Pacific Coast Gas Association.

"I believe that public utility companies not only can afford to pay better wages than any other type of business, but they cannot afford to do otherwise, because they must have the services of intelligent, self-reliant men and women of character, and that kind of men and women can and do command good wages."

Robert Cowie
President of the American Railway Express Company.

"In forty-eight years I have seldom issued an order."

Paul S. Clapp
Managing Director of the National Electric Light Association.

"The people of this country use as much electrical energy as all the rest of the world combined."

Merlin H. Aylesworth
President, the National Broadcasting Company.

"There is just as much difference between that form of regulation of, say, the telephone company and the National Broadcasting Company as there would be between the regulation of rates of newspapers and magazines and railroads."

14 POINTS—

On the Effect of Commission Regulation on the Values of Public Utility Securities, as Viewed by a Banker*

By HENRY R. HAYES

FORMER PRESIDENT OF THE INVESTMENT BANKERS' ASSOCIATION OF AMERICA; VICE-PRESIDENT, STONE & WEBSTER AND BLODGETT, INC.

1. *The charge is made that the State Comissions are not functioning. What is the investment banker's view about that?*

THE public utility industry could never have reached its present proportions and highly developed efficiency and economy without its monopolistic character—the underlying condition under which it could attract the needed capital from millions of investors. This monopolistic feature was made practicable by a wise and constructive public policy of state regulation of utilities. The fact that public utility securities enjoy a decided popularity with a large number of private investors as well as highly discriminating institutions may be taken as evidence of this state regulation on the whole having functioned satisfactorily. Wherever improvement is desirable in certain states, that condition should be considered not as pointing to the necessity of abolishing, but rather to the desirability of extending the powers of and increasing the necessary appropriations for those particular State Commissions. In other words, the complaints should be that there is rather too little than too much state supervision of a sound character.

2. *What effect has Commission regulation had in states that have strong Commissions, in inspiring confidence in utilities and inducing investment in their securities?*

STATE regulation has prevented abuses and has rigidly restricted rates and profits. At the same time it has given stability to the utilities, through freedom from competition. Wisconsin, California, and New York are examples of states where strong Commissions have had the effect of raising utility securities to a very high level in the investment market.

3. *To what extent do savings banks and insurance companies invest in public utility securities as the result of Commission regulation?*

THE statutes of several states exclude from the securities which savings banks and/or insurance companies are permitted to carry, those securities issued by utility companies which are not subject to state regula-

* Based upon questions asked by this magazine.

tion in the territories in which they operate.

The Massachusetts law on savings banks, in its clauses relating to the investment by such banks in utility bonds, requires that they must have been issued or assumed by any corporation ". . . which is operating under the supervision of a Public Service or other similar Commission of the United States or of any state thereof exercising regulatory jurisdiction therein." A similar clause in the New York law provides that such corporation must be "subject to regulation by a Public Service Commission or Public Utility Commission, or other similar regulatory body duly established by the laws of the United States or the states in which such corporation operates." The laws of a number of other states contain clauses along similar lines.

Even when such legislative restrictions do not exist, fiduciary institutions are hesitant to invest in utility issues not surrounded by the protection and safeguards afforded by strong State Commissions.

4. *Are utility companies better off in states which regulate public utility securities than in states which make no attempt to regulate them?*

WITHOUT doubt, a utility company operating in a state where wise regulation is provided is in a preferable position to the one operating in a state where such power does not exist and where, as a result, the factor of uncertainty as to rates, service, valuation, and competition takes the place of the stability under well-regulated supervision. Its securities (as noted in the answer to question 3) will be more popular than of the less effectively regulated company and will return a smaller yield. That, of course, is in the interest of the welfare of the enterprise in general. It has been the experience of a firm like Stone & Webster and Blodget, Inc. that savings banks and insurance companies show a decided partiality towards the securities of utility companies which are subject to the rules and decisions of well administered State Commissions or Commissioners.

5. *In what respect has Commission regulation been ineffective?*

THE attack against state-wide regulation, including the important element of fair valuations of properties, has been altogether too general. Perfection of standards and practices for state regulation may not have been attained, but, if this is true, one should strive for the nearest approach to such perfection rather than for abolition of a system that has proven to be highly beneficial in spite of certain and, in many instances only local, deficiencies.

6. *Who is to blame?*

IF the results have not been altogether satisfactory in some states, this may largely be attributed to misunderstandings, public or managerial, and to considerations affecting the state governing bodies.

7. *What is the remedy?*

EDUCATION of the public (straightforward and truthful) as to the importance of these questions, so that the public officials in the various states are forced to be guided by the enlightened demands of their voters as to the enactment of utility regulating laws.

8. *What about sufficient appropriation for the maintenance of an efficient personnel of Commissions and their staffs?*

IT is highly important for the proper functioning of the State Commissions in the performance of their tasks, that adequate funds be appropriated to secure first-rate and highly able Commissioners, as well as the facilities of an efficient and properly trained staff.

9. *What might happen if Commission regulation were crippled?*

THE principal safeguards of stability and protection behind the securities of the utilities having been removed, the investing public (including the smaller and larger institutions) would be very reluctant to entrust new capital to such enterprises. As a result the further expansion of the utilities would be hampered, a higher coupon rate would have to be offered to raise new funds with the unavoidable sequel of higher charges to the public and energy-consuming industries. Eventually such an unhappy condition would result in poorer service.

10. *What are some of the defects of the present laws?*

PRIMARILY, the inadequate powers vested in the Commissioners and the inadequate appropriations voted by the legislatures.

11. *What would be the advantage of uniform state laws?*

FOR the companies, the operation would be made easier, especially in cases wherein more than one state is served or where power is exchanged. For the investors, the present confusion on account of the varying laws of the different states would be removed. The securities of public utilities would raise capital cheaper because the companies would more readily command national markets. In addition, judicial decisions may be expected to undergo a similar beneficial simplification.

12. *What is the advantage of full publicity of utility financing information—*

(a) *As to public relations?*
(b) *As to future financing and development?*

AS *to public relations:* It would promote cordial relations between utilities and their customers and dispel a mystery about figures that now is often harmful and makes the public an easy prey of the arts and deceptions of demogogues. A fully and correctly informed public is a decided asset also from the viewpoint of the companies themselves.

AS *to future financing and development:* As far as compatible with the true and honest interests of the companies, publication of essential facts at regular intervals and in particular in connection with any new financing, has a wholesome effect on the investing public and increases their confidence in utility securities. It is evident that the smooth disposal of new issues, promoted thereby, should encourage development plans which in turn are in the interest of the community as a whole.

13. *What part does proper regulation play in this publicity?*

IT would compel the companies to disseminate correct and adequate information in their reports made available to the public.

14. *Why is it important that utility development be encouraged?*

(a) *What is the value of service to the individual?*

(b) *What is the value of service toward the promotion of other industries?*

THE *value of service to the individual:* Increased and cheaper utility service is essential for the proper development of home life and the greater enjoyment of life's amenities and educational facilities by the individual citizen.

THE *value of service toward the promotion of other industries:* It is hardly necessary to point to the importance of extended and, if possible, lower-priced utility service for the various industries and commercial enterprises of the country. Opportunity creates development. The lack of utility service by itself is sufficient to prevent the growth of a community or the proper development of industries in an otherwise favorably located section. As to the cost, utility charges may represent in most cases only a small proportion of total manufacturing cost, nevertheless, under the present-day highly competitive conditions, every reduction in cost is of importance.

Utility Facts Worth Noting

¶ The telephone industry of the United States employs 442,600 people.

¶ The physical strength of a strong man, measured in terms of horsepower and in comparison with a modern electric motor, is worth from 6 cents to 15 cents an hour.

¶ There are 23,000,000 consumers of electricity in this country, and 15,000,000 consumers of gas.

¶ There are 253 women street car conductors and 20 women motormen registered in the United States.

¶ Two-thirds of the population of the United States live in homes which use electricity.

¶ Nine per cent of the farms in this country use electricity in some form.

¶ Less than one per cent of the nation's entire railroad mileage is electrified.

¶ Six per cent of the income of the average American family is spent in the purchase of public utilities service of various kinds.

¶ Long-distance telephone calls in France must be paid for in advance.

¶ According to the preliminary reports for the year, Class I railroads in this country show a return of 4.65 per cent on their property investment.

¶ 75,600,000,000 kilowatt hours of electricity were generated by the central stations in this country in 1927.

¶ The per capita consumption of electric energy consumed in the United States is 680 kilowatt hours. Germany is second with 320 hours, while Great Britain and France rank next with 220 hours each.

¶ A regular weekly air-service, run on a schedule that follows the timetable, is maintained for carrying both passengers and freight between London and India.

The "Promotional Rate" and Its Applications

PROMOTIONAL RATE—An attempt to increase the net revenue from each gas or electric customer above the fixed charges of serving him and at the same time to stimulate business, especially by the encouragement of heavy duty appliances.

—ADAPTED.

BY FRANCIS X. WELCH

THE so-called "promotional rate" appears to be an epidemic throughout the land at this writing. An explanation of the aim and purpose of the promotional rate was given on page 77 of our January 24th issue of this year.

An examination of the recent rate developments in various states gives the impression that concerted effort is being made by various gas and electric companies for Commission approval of rates having a promotional feature. In Massachusetts, for instance, a proposed rate schedule for domestic electric service based on the so-called room rate was made an optional alternative with the ordinary per kilowatt hour rate in order to allow its use by those customers finding it advantageous without penalizing other customers having houses with a large number of rooms but using a small amount of energy. The Wisconsin Commission has accomplished the same result through a little different means by using the connected load count instead of the number of rooms in measuring the demand for electric household rates.

We have already described in these pages the action taken by the Michigan Commission in the encouragement of hot water heaters using gas on the thermostatic principle. More recently there have been state wide and sweeping rate revisions both gas and electric in the states of Alabama and Georgia. The Missouri Commission is the latest to deal with this question.

These are just the states which have finally passed upon the advisability of promotional rates. News items from practically every eastern state and even Canada showing rate revisions along lines that will stimulate the use of household appliances are being watched and contemplated by utility officials, lawyers, and the Commissioners themselves.

The reason for this sudden and widespread interest is unquestionably due to the rapid development of heavy duty appliances. Gas and electric rates heretofore have been out of step with this development and gas and electric companies are feeling keenly the loss of great business which they might otherwise have if rates were so

designed as to encourage the use of such new improvements as electrical refrigerators and hot water gas heaters.

The old block rates under which many gas and electric companies are now laboring were designed at a time when electricity was used chiefly for illuminating and gas was more or less restricted to cooking. For the average citizen to fill his house with the appliances that are on the market today such as electrical irons, vacuum cleaners, washing machines, hair curlers, cookers, toasters, radio, victrolas, and refrigerators it would take a considerable fraction of his income to defray the monthly electric bill. Consequently it will be seen that promotional rates which place the costs of service distribution where they belong will be necessary before the universal use of these modern appliances can be attained.

One important feature of the promotional rate is the service charge. This charge is an attempt by the company to make the consumer pay for the fixed expenses to the company of standing ready to serve him whether or not he uses such service. The service charge is sometimes disguised by including it in a minimum charge but the purpose is the same. This is to avoid the widespread misunderstanding and unpopularity of the bare service charge.

It is a delicate task, however, to adjust the rates so as not to shift too great a burden on distribution cost upon the small consumer. The Missouri Commission, for instance, has said:

> "We find no fault with the company in trying to promote its business but every class of consumer should bear its just share of carrying on the business, as well as its share of promoting the business. If the small customer is made to bear the cost of promoting a new class of customer or business, the going concern value later accruing in that new business should belong to small customers and not the company."

The service expense found by the Commission in the recent rate adjustment of the Laclede Gas Light Co., (P.U.R.1929A, 561), was calculated in the following manner: It was found that the company had an investment of 25.03 cents in the installation of meters and service pipes per consumer. Added to this was an item of 8.37 cents for the expense of the smallest consumer's demand on the company's distribution system. This latter figure, of course, varied with the size of the meter. After this was an item of 17.29 cents to cover billing, meter reading, and collecting, which, of course should be divided equally among all meters regardless of size or consumption. This made a total of 50.69 cents (including a fair return and depreciation on the company's investment in the various items) which the smallest class of consumers cost the company before a bit of gas was used. This charge was absorbed in a monthly minimum charge of 75 cents for which 300 cubic feet of gas was allowed.

These figures would vary of course when applied to different companies that are operating under different conditions, but the principles are applicable to any gas company and should be of special interest to a utility that is contemplating a promotional rate revision.

The Era of the Scientist in Utility Management

The Increasingly Important Part that Is Being Played in the Drama of Big Business in General, and of the Public Utilities in Particular, by the Experimental Laboratory Worker and the Research Expert.

By EDWARD A. FILENE

¶ *More and more are public utility corporations, industrial enterprises and big business generally, turning to the scientists for help in solving their problems.*

¶ *American business, through both private and governmental agencies, is spending over $200,000,000 a year on scientific research and experimentation. Much of this work is being done, directly and indirectly, by the public utility companies. Under the modern theory of regulation, the determination of how much of this work shall be done undoubtedly comes within the discretion of company management.*

¶ *The telephone interests alone spent $15,000,000 a year in laboratory and other research; the electric light and power companies spend almost as much; the gas companies, the street railway companies, and the water companies follow in the order named.*

¶ *This vast investment in science is paying dividends.*

¶ *The author of this article is a successful merchant of international prominence who has himself turned to the research expert, the laboratory and the scientist for aid, and who stands high in the counsels of big business.*

WITH half the population of England, Germany, France, and Italy combined, the United States produces twice as much as all of them together. Statisticians have computed that our production per person is one and a half times that of our nearest competitors, the Canadians, and thirty times that of the Chinese. That is the basis of the American standard of living.

No one can dispute that this increasing general prosperity is due to the rapid development and spread of the new scientific methods of mass production and mass distribution as

applied to both private enterprises and to our public utility services. Yet many are unable to remain calm as big business, through which mass methods must be applied, conquers the modern industrial system. For the machinery and organization necessary to produce and distribute goods and service in large volume can be financed only by great capital.

There is, however, a half-way acceptance of big business and mass methods. Considerable clamor for restrictive legislation is still heard. Some Congressmen are indignant as mergers and combinations work towards a concentration of our public utility, our manufacturing and retailing enterprises. And some people—mostly impractical theorists—while they do not deny the material benefits that come from the mass production, still profess to see in the "materialistic age" a grave if indefinable danger to mankind.

The half-way acceptance of mass methods is due, no doubt, to the undeniable fact that it has made both goods and service cheaper. There is, perhaps, no greater concentration of wealth and power—no more easily recognized example of Big Business—than in the Ford Motor Company; yet it is generally recognized that Ford has not only made cheaper automobiles but by his competition has forced the whole industry into scientific methods, with resulting cheaper costs and lower prices to the consumer.

A FACT that is often lost sight of is that mass methods, in whatever field of production or distribution they are applied, must, under the modern business system, have the same effects. Big business is not bad in itself, and is not to be feared. There were undoubted excesses in the pioneer stages that preceded the "trust-busting" era of our industrial history. While the concentration of power in a relatively few concerns may in the future give rise to abuses and policies that are anti-social and at times lawless and short-sighted, it is certain that these effects can be only temporary, because the pressure of competition as well as that of self-interest, combined with an enlightened public opinion, will compel the development of big business as an instrument of public service.

That becomes clear if the full effects and implications of scientific mass methods are understood. There is more to be studied in the modern business system than the production of distribution of great volume.

Mass production and mass distribution not only can pay high wages and sell cheaply but must do so in order to create the buying power necessary for the marketing of their products. This desire to keep costs low, and to eliminate wastes in production and distribution, is evidenced on all sides. We see consolidations of utility enterprises; we see manufacturers entering the distribution field with chain stores, to reduce some of the wastes of distribution; and retail organizations, in the effort to get their prices lower still, going into manufacturing.

In the past the purpose of big business was, too often, to create a monopoly to increase prices. Today big business—which includes the public utilities—has as its aim the lowering

of costs and prices through large-volume production and sales.

There is a sound business reason for this. Scientific mass producers soon discovered that products and service must be sold as well as manufactured. It would be foolish, for instance, to make a million automobiles or two million pairs of shoes if one were going to charge $25,000 for each automobile and $50 for each pair of shoes.

Now business recognizes that the consumer, not the manufacturer, sets the selling price. Under the old industrial system men produced only the limited number of units they thought they could sell. Then, generally, they computed their costs, added their profits and so established a selling price. Under mass production and mass distribution, the price that the public can pay determines the selling price, and, as a rule, the lower the price is set, the larger the market and the greater the total profits of big business. So we find, strangely, that the desire for profits is a force for lower prices. The manufacturer produces in such large volume that his lower costs and reduced "overhead" expenses enable him to sell at a price the masses can afford to pay.

THE principles of mass production and distribution have been adopted more and more in the manufacturing and selling phases of burners, ranging from razor blades and dollar watches to kilowatt hours and street car fares. By the reduced production costs and lower consumer prices, business men are meeting the competition of units produced in the old, inefficient and wasteful way.

We must not fall into the error of believing that this new industrial system is a Frankenstein, threatening to convert human beings into standardized machines to consume standardized products. It is nothing like that. It is a willing tireless servant, capable of performing the drudgery of the world and liberating us all for a richer enjoyment of life. It is not essentially defiant of the public interest as "big business" was during its transient pioneer stage, but is using applied science in the service of civilization. Mass production and mass distribution have come to stay and to dominate the future of the world. And, on the whole, it is good. I am under no delusions that our industrial system is perfect. I realize that many abuses still exist. Yet I am convinced that social progress in the future will be achieved, not by restrictions on our business system, but by its further and finer development. The pressure of necessity, during the next ten or twenty years, will force its reform; a pressure that will be economic—a force boring from within rather than outward political compulsion or the power of an impatient public opinion.

I am not suggesting that business men are going to experience a new birth of social idealism, but simply that business men, face to face with difficult times, will do the things that must be done to insure their success. Then we will discover that business intelligence and social idealism have met and merged.

It will come about somewhat in this fashion. For some years to come, as far as we can see, America will be unable to export all the surplus goods

it can manufacture. Even now we cannot export the surplus we are geared to produce, for Europe, in reduced circumstances, is not a good customer. Therefore, there will be keener competition for domestic business—a vigorous age of super-competition.

THE small business man, the inefficient business man, the unintelligent or untrained business man will not be able to match prices and service with the great public utilities, the factories, the big stores, and chains of stores that have adopted the new methods of scientific mass production and mass distribution. These scientific mass principles, widely applied by big business, however, will result in almost incredible efficiencies and economies which will bring lower prices to the consumers, higher wages to the producers and greater profits to the owners.

Unsuccessful businesses are generally those that are operated on a small scale by obsolete methods and policies, under incompetent management, handicapped because they do not have the knowledge essential for success, or, having it, do not properly interpret it.

The successful business men in America today are those who apply the modern technique, and are constantly on the hunt for better methods, both in production and distribution. That is, they use the fruits of research. There can be no place for those who work by haphazard methods, by guess-work, by rule-of-thumb.

THE conduct of business in this modern day must be on the basis of fact, not of opinion. Business can be made a science no less than medicine, biology, physics, and astronomy. These fields are made the subjects of systematic thought and painstaking experiment. Scientists in these fields do not rest on one discovery but are everlastingly at work developing new theories and substantiating them or abandoning them as the results of their experiments direct.

Business, unfortunately, has not, in the main been so scientifically carried on. Most of the successful business is today, but the majority of business firms are not successful, or at least not as successful as they might be under more intelligent management.

The very existence of even the best organized and most efficiently managed business today depends upon a correct diagnosis of the future. What volume of sales can be expected over a definite period? What will the trend of prices be? Shall we buy ahead? How are we to finance extensions of operation? What effects will European affairs have on our undertakings? Most men fail because they do not have the facts to answer these questions. They speculate and guess when they ought to know.

As a business man myself, facing the problems of our own stores daily and keeping in constant touch with leaders in other branches of industry, I am convinced that research (or as I am more accustomed to saying, "knowing what you know"), is the most important factor in successful management. And it is an important fact, in considering our industrial system, that normally the expenses of scientific research are so great that only the large organizations can afford it.

Those who rely on hunches, guesses, intuition or even "native business ability," cannot hope to survive the coming period of super-competition. Without an intelligent understanding of all the factors affecting their business, and they are factors whose relative value is undergoing constant change, they will be as blind men in the race. They are beaten before they start.

THE intelligent business man today has the greatest respect for scientific research. He encourages it, even though it may not benefit him directly, for he understands that discoveries which contribute something to society must add to his profits—and *vice versa*. Most of the progressive manufacturing and commercial firms and public utility enterprises maintain research staffs and laboratories and are spending millions of dollars a year to improve their methods and develop new ones—both in production and distribution.

American business, through private and governmental agencies, is spending more than $200,000,000 a year on research work — $70,000,000 through the government and $130,000,000 through commercial firms. The General Electric Company alone spends $14,000,000 yearly in research and experimental work. The electric light and power companies spend between $5,000,000 and $10,000,000 a year. The Radio Corporation of America spends $1,000,000 a year on research. Ninety trade associations are carrying on research.

In addition to the government's vast and varied investigations touching every phase of business, each one of more than sixty trade associations maintain one or more research assistants at the Bureau of Standards where they have access to all government facilities.

SOME of the largest corporations are spending millions of dollars a year, perfecting and developing devices that will enable them to produce more cheaply. In fact, many of the biggest organizations today, such as the General Electric Company, literally grew from laboratories.

The United States Steel Corporation, General Motors, United States Rubber Company, Western Electric Company, American Telephone & Telegraph Company, spend millions of dollars a year and employ thousands of men in research. General Motors has erected a large building in Detroit to house its laboratory and research staff; the American Telephone & Telegraph Company carries on its research work on three floors of a big building in New York and has 4,000 persons employed in the work which costs $15,000,000 a year. The Western Electric Company has a staff of 30 or 35 men constantly at work in its laboratories.

The American Gas Association only last fall opened its new testing laboratory in Cleveland "to promote and develop the gas industry to the end that it may serve to the fullest possible extent the best interests of the public." During the period of its activities 98 per cent of the gas appliances submitted for test have been returned with suggestions for improvements. In addition, a fund of $100,000 a year is being spent for research in industrial gas utilization in outside

agencies—largely in university and in privately-maintained laboratories that are particularly equipped for specialized work.

One company alone—the Consolidated Gas Company of New York—in addition to its laboratory and staff, spends approximately $40,000 a year for "testing and research."

The electric light and power industries spend enormous sums on experimental work; they have perhaps the best equipped experimental and research laboratories of their kind in the world; the famous Nela laboratories are known throughout the world.

The street railway utilities conduct extensive investigations, particularly along the lines of accident-prevention and public relations work; among the more prominent are included the Philadelphia Rapid Transit Company, the Pennsylvania-Ohio System of Youngstown, Ohio, the Chicago Service Lines, the Boston Elevated, the Pittsburgh Railways, and the Cleveland Railways.

Numerous other types of business are carrying on extensive research in every field that affects our commercial life. In addition to manufacturing concerns are merchandising establishments such as the Retail Research Association; banks and trust companies such as the Chase National Bank; insurance companies through the American Underwriters Association; advertising agencies and chambers of commerce.

RESEARCH is not confined to concrete and material things. It has gone behind these to examine the fundamental principles of economics and business. Labor organizations have several agencies for collecting business and economic data which increase the general understanding of wage earners in regard to our business system. For a dozen years business men have maintained the Chamber of Commerce of the United States, which collects facts bearing upon business conditions and the general welfare so that busy executives may be prepared to solve the problems that confront them and the country. Many of our leading banks such as the Federal Reserve, National City, and the Cleveland Trust Company, carry on elaborate research work on economics and business conditions—of incalculable value in keeping business men to intelligent decisions.

IT is difficult to gauge the value of such activities. Even in industrial research it is difficult to measure the results accurately for they extend far beyond the direct savings accomplished. That statement can be made clear by citing the Bessmer Process in the steel industry. While it resulted in increasing the output of steel four-fold and cut the cost one fifth of what it had previously been, the Bessmer Process really did much more than that; it facilitated the development of transportation with all the blessings that the wider and cheaper movement of people and things has showered upon the country. It welded the nation into a great industrial unit; it stimulated building activity and in railroading, building and steel mills it gave employment to thousands. These thousands in turn, through the buying

power of their wages gave employment to thousands of others in other factories.

In recent years scientific research has reduced the fuel consumption of locomotives while at the same time it has increased their hauling capacity, and saved the railroads millions of dollars. But more than that: the improvements in locomotives coupled with better traffic management, have speeded up the movement of freight. This faster movement of freight has permitted merchants to carry smaller stocks of goods and has saved them, as well as manufacturers, millions of dollars in interest, insurance, and warehouse charges.

THESE illustrations only suggest the benefits that can accrue to the country as a whole through the contributions of research to industry. The direct savings are enormous. While the government spends $70,000,000 a year on research, this investment brings an enormous return. The Bureau of Standards' investigations of motor fuel, I am told, have resulted in savings of $100,000,000 a year and that in creating a new substance for brake linings it has saved $15,000,000 a year. Its improvements in tire manufacturing processes alone have cut consumer's bills by $40,000,000 a year. Of course we cannot compute how much saving has resulted from the Department of Commerce's campaign which induced manufacturers to standardize and reduce the number of their products, but it undoubtedly runs into hundreds of millions a year.

The American Telephone & Telegraph Company's $15,000,000 annual outlay flows back to it and the public manyfold. By adapting the radio tube to the telephone service, and so increasing the capacity of its wires, the company saves millions a year in expenditures for copper. One part used in a telephone was redesigned, so that it could be manufactured more cheaply, and the saving was estimated at $10,000,000 a year.

The discovery of the gas-filled electric globe by Dr. Irving Langmuir saves us more millions of dollars in electric current and in coal, than can be computed.

Few industrial or business processes are precisely what they were a decade ago. Today we have many new industries and new methods of doing business that were scarcely imagined ten years ago. We have not reached the limit of development.

It is hard for any generation to believe that the next will bring even greater wonders—but it always has.

Who Really Exercises Control of Bus Drivers?

THE *Colorado Commission has ruled that it has control over the conduct of bus drivers. This announcement will probably come as glad tidings to some of our utility executives who might have, at times, suspected that nobody had any control over bus drivers. The Commission indicated that it would take steps, if necessary, to stop the practice of certain drivers of smoking and loafing at intermediate points while passengers wait in the busses.*

Hon. Lester Hooker

Chairman of the Virginia State Corporation Commission

HONORABLE Lester Hooker, Chairman of the State Corporation Commission of Virginia, was born and reared on a farm at Buffalo Ridge, Patrick county, Virginia. He was born April 25, 1885, the son of John Wesley and Margarette Akers Hooker.

After attending the public schools of his county, Chairman Hooker went to William and Mary College at Williamsburg, Virginia. He then entered the law school of Washington and Lee University at Lexington, Virginia, taking his degree June 16, 1909. He then became associated with his brother in the general practice of law at Stuart, Virginia, under the firm name of Hooker and Hooker. This firm enjoyed a large and varied experience in the practice of the law.

CHAIRMAN Hooker was married in June 1912 to Miss Nell Sanford, the daughter of Rev. Millard Fillmore and Nellie Nevitt Sanford.

During the World War Chairman Hooker served on the Legal Advisory Board of his county; he was appointed to it by Governor Henry C. Stuart.

In 1922 he was the successful state campaign manager for Senator Claude A. Swanson in his campaign for re-election to the United States Senate.

In 1922 he was appointed by Governor E. Lee Trinkle as a member of the Board of Virginia Teacher's Colleges; in this office he served until he resigned soon after taking his seat on the State Corporation Commission.

He was a candidate for membership on the State Corporation Commission in the Democratic primary in August 1924. He had no opposition and was declared the nominee of his party. He was elected at the general election in November, 1924, over Republican opposition. He took his seat on the Commission November 25, 1924, and was elected Chairman of the Commission February 1, 1928.

Under the present organization of the Commission, the chairmanship is to be rotated among the members with the purpose of heightening its efficiency through familiarizing all its members with its larger contacts and preventing any one member becoming vested with more power than is consonant with the equality of the members.

IT is possible that the scope of the Commission activities may be largely increased in view of a recent recommendation by Governor Byrd in a special message that the fire insurance companies in the state be placed under the jurisdiction of the Commission, where they would come under the division of insurance and banking.

One Stockholder's Ideas of "Square Dealing"

Some fundamental principles of economics, finance, and public relations—as expounded by a utilities investor who attends an annual meeting and views the results with alarm.

By HENRY C. SPURR

Recently several bold, double-column-spread advertisements appeared in some of the newspapers of the city of Washington. They were signed by Julian Pierce, a stockholder of the Washington Gas Light Company, and were in the form of an open letter to the officers and other stockholders of the company.

Mr. Pierce believes it is right for stockholders "to deal honestly with their fellow citizens." This is so unusual—coming from a stockholder—that his views on business ethics are of some interest.

It appears that Mr. Pierce is librarian of the American Federation of Labor. A few weeks ago he purchased a small amount of stock of the Washington Gas Light Company. Prior to that he had often spoken in public against various forms of injustice, of which he has always been an open enemy. His ascent or descent—whichever way one views it—to the status of a capitalist, as owner of stock in a public utility company, has not altered his point of view on questions relating to the public welfare.

Soon after getting his stock, Mr. Pierce was given the privilege of signing a proxy that authorized other stockholders to vote in his stead at the annual meeting of the stockholders; but he announced in the newspapers that he would be at the meeting himself and do his own voting.

"I insist," he said, "that it is the patriotic duty of all stockholders to exercise to the fullest their right of control over the companies they own, and from which they receive a profit."

Mr. Pierce, however, found that not all of the other stockholders thought as he did about attending the meeting. He was much surprised to find only a handful of stockholders present, none, indeed, except himself, aside from the members of the board of directors.

Such indifference to duty on the part of stockholders he regards as unhealthy.

This is perhaps a minor complaint, but it is a very old one. It is a condition which has prevailed for many generations, not only in other cor-

porations but also in other organizations of all kinds. The question is often asked:

"Why do not more people go to church?"

Also the question:

"Why do not more members of the labor unions attend the meetings?"

Come to think of it, why does that little provision about a quorum always have to be in the by-laws of every organization?

Some ascribe this apparent neglect of duty to lack of loyalty or patriotism, or consider it at least as one of our human weaknesses. Others deem it a part of our mechanism of defense, a time-saver, an evidence of efficiency. Letting a select few do the bulk of the work of the various organizations that we join, is part of that division of labor which has done so much to raise our standard of living. If financial support of these bodies always involved faithful attendance at the meetings, and active participation in the business, there would be fewer organizations than there are now—not even excepting labor unions. There must always be leaders upon whom the burden of the work falls. This is a great time-saver, if nothing else.

Besides, no business could be run in any other way very long. If the selection of a church choir, for example, were always left to the entire congregation, it would not be safe to predict what might happen.

THE reason why the average stockholder who owns a few shares of stock in a large corporation, does not attend the annual meetings, usually is that he does not know much about the business and prefers to have it run by those who do. He buys stock because he trusts the management. If he does not have confidence in the men who are conducting the business, he stays out. If he is in and has any grievances against the company or its business policies, it is probably his duty to air them at the annual meeting if he can afford to be present, or, if not, to make his views known to the other stockholders in any way possible. If he is satisfied with the way affairs are going, there is no reason why he should attend the meetings. If he desires to compliment the management, he can do it just as well by letter.

Mr. Pierce, no doubt, had good reason for going in person to the meeting, as indicated by a series of resolutions which he introduced.

Let us consider what they were.

THE first resolution called for the appointment of a committee to investigate the practicability of the 5-day week for all the employees of the company, without reduction in wages or salaries or compulsory increase of output.

Another resolution declared that the company has no moral right to any return on money not invested in the property, meaning that the return to the stockholders should be based on the investment in the property rather than on its value. Pursuant to his desire to deal fairly with his fellow citizens, Mr. Pierce would have the company make no claim to anything beyond a return on the actual investment in the property.

The third resolution was aimed at propaganda "for or against government ownership" by the use of corporate funds. Mr. Pierce would have

the directors and other officers instructed to refrain from all propaganda "either direct or indirect, for or against" public ownership. He would prohibit either corporate or individual membership in any organization or association whose purpose is to disseminate propaganda "for or against" public ownership, and also corporate or individual contributions for the purpose of propaganda "for or against" public ownership. It is not quite clear whether this resolution was strong enough to prevent the individual stockholders, who are not officers or members of the board, from talking on the subject. It looks as if Mr. Pierce would place no prohibition on them. This may have been an oversight or it may have been intentional, as favorable action on the resolution would prevent Mr. Pierce from expressing his own views on the subject.

MR. Pierce, in his dramatic appeal to the other stockholders, assumed the role of the honest, public-spirited citizens of high character, with humanitarian impulses; but the chances are that the reader, before now, will have suspected in this little incident, the hand of Esau but the voice of Jacob.

Let us, however, assume that it is only the hand of Esau. Let us analyze Mr. Pierce's propositions solely from the standpoint of honest dealings between gentlemen, the high position he has essayed to take.

There are three groups of persons financially interested in utility rates—capital, labor, and the ratepayers. When Mr. Pierce speaks of dealing honestly with his fellow citizens, he obviously means dealing honestly only with labor and the ratepayers. By "dealing honestly" he means dealing fairly, and, no doubt, generously; but it must not be forgotten that we cannot deal generously in the way Mr. Pierce suggests with both labor and the ratepayer, inasmuch as their interests are antagonistic. Every time an increase is made in the compensation of labor employed by public utilities, the compensation of ratepayers must be decreased, no matter whether rates are based on the value or investment theories. The interests of labor and the ratepayers are as antagonistic as are the interests of the ratepayers and the stockholders.

The demand for a 5-day week for labor, with no decrease in compensation and no increase in output means an added cost in the production of gas, which must be borne either by the ratepayers or the stockholders. Mr. Pierce probably thinks it should be borne by the stockholders, in spite of the fact that he is himself a stockholder. He wants labor to receive the highest possible compensation for the service it renders to public utilities, and labor to pay the lowest possible compensation for the service it receives from public utilities. That may be excusable, on the theory that everybody is for himself and the devil take the hindmost; but the idea should not be embellished by the halo of high ideals.

WHY should labor have its compensation fixed as high or higher than it was ten or twenty years ago, while the compensation of capital, the fruit of labor, be reduced to half of what it was ten or twenty years ago,

which is just what Mr. Pierce demands, as will be shown? How does such a theory provide any room for the operation of ethics or square dealing?

Mr. Pierce stands for the investment rather than the value theory of estimating the reasonable return to which utilities are entitled. The difference between these theories may be simply illustrated.

A house cost, let us say, $10,000 before the war. It is now worth $20,000. Assume that 10 per cent on the cost of the house, or $1,000 a year, would have been a fair rental before the war. What is the fair rental now?

The investment theorists say that $1,000 is still the fair rental. The value theorists say the rental should be 10 per cent on the present value of the house, or $2,000. Mr. Pierce and other investment theorists declare that if this house were part of the plant of a public utility company, to demand more than the original $1,000 rental or return would be an unjust exaction from the ratepayers.

The Supreme Court has held that utilities are entitled to a return on the present value of the house, which is $20,000, rather than on its original cost, which was $10,000.

The advocates of the investment theory admit that the utilities have a legal right to a return or rental on the present value of the house, but to insist on it they say is unfair; or, as Mr. Pierce puts it, dishonest.

That is the controversy between the investment and value theories in a nutshell. Is it true that the equities are all in favor of the investment theory?

MONEY, as all economists tell us, is only a medium of exchange. Let us assume that twenty years ago, when a new public utility plant was built, Mr. Brown purchased 208 shares of stock at $100 a share, upon which he received a 7-per cent return, or an annual sum of $1,456, which amounted to $28 a week. This is what Mr. Brown got for the use of his money at that time. Let us suppose that he was and still is entirely dependent on the income from this investment for his living.

Let us now assume that Mr. Pierce has worked for the company from the start; that he began at the weekly wage of $28, and that the $28 wage was fair at the time, both for Mr. Brown and Mr. Pierce.

Mr. Pierce has to buy butter and eggs for his table. There are other things he needs for his comfort, but let's confine ourselves to butter and eggs. Mr. Brown also has to have butter and eggs for *his* table. Their compensation of $28 a week enabled them to buy a certain quantity of butter and eggs.

Pretty soon war is declared. Money is inflated. Prices go up. When Mr. Brown invested his money in the company, and when Mr. Pierce began to work for it, butter was selling at, say, 25 cents a pound and eggs at 20 cents a dozen. After the war, butter costs them 50 cents a pound and eggs 40 cents a dozen. Mr. Pierce is working just as hard as ever. His rate of production for the company is the same now as it was before the war. If his wages are not increased, however, he will now be able to buy only half as much butter and half as many eggs as he could before

the war. If, on the other hand, his wages are doubled, so that he now gets $56 a week, he will be receiving twice as many dollars as he did before the war, but no more butter and eggs, which is after all the important thing to be considered. If his wage before the war was fair, the increased number of dollars he now receives will also be fair, because his real wage, the things his dollars will buy, will be just the same as it was before the war.

Now, how is it with Mr. Brown? He invested a certain sum of money upon which he received a 7-per cent return, which amounted to $28 a week. Obviously, Mr. Brown's $28 will buy no more butter and eggs than will Mr. Pierce's. Mr. Brown, being human also, has to have butter and eggs.

Now, the important thing about Mr. Brown's compensation for the use of his capital is not what it amounts to in dollars, but what it yields in butter and eggs. Mr. Pierce, as a laborer for the corporation, desires as large an allowance of butter and eggs for his work after the war as he got before the war. His idea about Mr. Brown, however, is that the latter should be limited to half of his original allowance of butter and eggs. But if Mr. Brown's pay in butter and eggs was fair before the war, how does it happen that only half of what was fair then is fair now for the same service?

Those who swear by the investment theory do not say: "We will stick to the investment as the basis of calculating the return; but, owing to price inflation due to the war, we will now give you 14 per cent on your investment, where formerly you received 7 per cent." They insist on sticking to the same basis of calculating the return, and the same percentage of return; in other words, on cutting the investors' supply of butter and eggs in half.

They admit that a certain quantity of butter and eggs was fair for the investor before the war, but claim that the same amount of butter and eggs for the investor now would be a great outrage. In their opinion, what is fair for labor and everyone else is unfair for the investor.

Oh, yes, it is true that bondholders get squeezed by the inflation of the dollar; that they get half the quantity of butter and eggs in payment for their investment as they might reasonably have expected before the inflation of the value of money due to the war; but that does not make such a condition morally right. It must be remembered that we are now attempting to stand on the same high ethical platform to which Mr. Pierce has mounted. There is no more reason why stockholders should be deprived of the same amount of butter and eggs they had before the war, where it is possible to give it to them, than it is that labor should be deprived of the same amount of butter and eggs it had before the war, merely because bondholders and certain other security holders suffer an injustice because of the inflated condition of the dollar.

It may be all right for ratepayers to stand for the investment theory on the ground that it is to their interest to force rates down to the lowest

possible point, irrespective of any question of ethics; but it is not proper for Mr. Pierce to do so, because he stands for the utmost nicety of square dealing. He cannot stamp a demand of labor for a certain thing as fair, and the demand of capital for the same thing as shocking.

MR. Pierce is much concerned about propaganda "for or against government ownership." Here, we venture to guess, we have Jacob again masquerading as Esau. What Mr. Pierce is really concerned about is propaganda against government ownership. He wants to prohibit corporate officers and individuals from engaging in any discussion of the subject, which, of course, means that he wants to keep them from saying anything against government ownership. The individuals he refers to are, no doubt, individuals connected with public utilities in some way. He probably does not desire to deny himself the right to talk on that subject. It is not certain, as already indicated, that he wishes to close the lips of stockholders, provided they are not officers or directors of the company. Mr. Pierce is reported to have been an active advocate of reform measures of various kinds, often holding forth from the sidewalks of Pennsylvania avenue. It would be too much to assume that the controverted question of utility ownership had until recently escaped his attention, or that he would wish to foreclose himself from any further expression of opinion on that subject, in the public interest.

As long as we have free speech, we shall have propaganda. It will be impossible to put the utility ownership question into an *Index Expurgatorius*. Attacks on free speech, in whatever guise, will never be regarded with equanimity by the average, sober-minded American. Attacking propaganda by public utilities on the ground that it is an improper operating expense is an attack on free speech in a pretty thin disguise. Going beyond that in an attempt to close the lips of individuals would not be tolerated in America, even if there were no Constitution.

If we were perfectly frank, we would have to admit that we humans are funny beings. We like ourselves, and we like our friends. Outside of that we are inclined to be less charitable. Whatever we or our friends do is all right with us; but our enemies must be mightly particular about their etiquette; and this applies to propaganda. But men may disagree without being dishonest.

Mr. Pierce's resolutions were not favorably acted on by the other stockholders. It was stated on behalf of the company that it had not been engaged in propaganda against government ownership, and that such propaganda was not contemplated.

"It is not the crook in modern business that we fear, but the honest man who doesn't know what he is doing."

—OWEN D. YOUNG.

WANTED—A Full-Powered Public Service Commission

A striking example of the waste and inefficiency that ensues when no single, authoritative body is established to regulate public utilities in general, and the street railway utilities in particular, is furnished by our national Capital—in the city of Washington itself.

In the Capital are three transportation systems—two competing railway companies and a bus company.

For a generation efforts have been made to bring about a merger of the companies.

Two years ago the Public Utilities Commission of the District of Columbia was created. A merger plan was proposed, considered and tentatively agreed upon. But in the District of Columbia no merger may be completed until it is approved by Congress.

As soon as the merger plan was submitted to that body, the complications, delays and confusion began. The Senate, the House of Representatives, the District Commission of the Senate and the House of Representatives, and innumerable civic organizations all put a finger in the pie.

This article tells what the result has been.

By M. H. GLAZER

VOTELESS Washington, virtually devoid of home rule, presents the striking spectable of an American city without a government of its own.

Subject to the whims, caprices, and pet theories of legislators from every state in the Union, its laws are the result of enactment by Congress, and its municipal agencies often are the vehicles upon which Congressmen ride through denunciatory tirades to the front page of popular favor. Its citizens, however, have the time-honored privilege and prerogative of free speech which they exercise upon occasions through their various local organizations.

Fifty-seven citizens' associations and a general federation of these groups, numerous parent-teachers associations, labor unions, Federal

employees' unions, business associations and various clubs are the media through which they express their will to Congress.

For many years, both in and out of of Congress, the street railway companies in Washington have been the subject of vilification. There had been little inclination either on the part of public official or layman to play fairly with an industry which had contributed so largely to the city's growth. Recently there has been some fear on the part of the citizens of absentee control, because of the fact that one of the companies is a unit of the North American Company. These conditions, together with the fact that until two years ago the District of Columbia had no effective, working Public Utilities Commission, are in part responsible for the loose and extended merger debate.

To begin at the beginning: Back in 1897, when Senator King of Utah was a young Congressman in the House of Representatives, there was much talk on Capitol Hill of the unification of the then-existing street railway lines operating in the District of Columbia. There were ten or twelve small companies, serving a population of less than 275,000. By the purchase of stock and consolidations, these companies were brought shortly thereafter under two principal railway systems.

Today there are three transportation systems—the Washington Railway & Electric Company, its competitor, the Capital Traction Company, and the Washington Rapid Transit Company (a bus company)—serving a population of 600,000. And there is still much talk—very much talk indeed—of unification.

Some progress, however, has been made in these thirty-two years, for the present discussion hinges upon a bill before Congress to approve a plan of unification submitted by the companies and ratified by the Public Utilities Commission.

And Senator King, as a member of the Senate Committee on the District of Columbia, together with his colleagues in both Houses, is still listening to the pros and cons of a single, integrated transportation system.

It is true that prior to the present negotiations, at least three attempts were made at a merger, all of which failed. The companies themselves could not come to a basis of agreement as to the standing of the security holders of the respective corporations. But with the creation, in 1927, of a Commission as a separate entity, steps were taken immediately to bring about a unification of the existing lines. Until then, the Public Utilities Commission was composed of the Commissioners of the District of Columbia, appointed by the President and approved by Congress, who also were the chief executives of the city. Their executive duties were too arduous to permit them to administer adequately the public utility laws in all of their ramifications.

The new Commission, consisting of two members and the Engineer Commissioner of the District serving as a third member, set about to effect a merger. This they considered their foremost task. Under an Act of Con-

gress of March 4, 1925, all legal obstacles to such a merger were removed. At the request of the Commission, the executives of the three companies came together, formulated a plan and submitted it to the Commission. That was in February, 1928.

After extended hearings and several conferences between members of the Commission and representatives of the three companies, the Commissioners advised the parties to the agreement that the plan would not be acceptable unless certain modifications were made. Shortly thereafter, the parties to the agreement submitted a revised agreement, incorporating the modifications proposed by the Commission and certain other modifications, to which the Commission had no objection. Within a week after submission of the revised plan, the Commission approved the terms and conditions of the merger agreement.

IN brief, the agreement provides for a $50,000,000 valuation rate base, to remain in force for a period of ten years, the fares to remain unchanged for one year, and upon which the company is to be allowed to earn a reasonable rate of return. The companies are to be relieved from paying the salaries of crossing policemen (the only city in the country where street railways are shouldered with such a burden) and part of the paving expense is to be shifted to the general taxpayer. Furthermore, the new company is to purchase its power from the Potomac Electric Power Company, a subsidiary of the Washington Railway & Electric Company, one of the contracting companies.

The Commission held that the $50,000,000 rate base was just and reasonable. Their own inquiries, based on valuations previously declared valid by the courts, justified a valuation of approximately $62,500,000. The companies, eager for a merger, were willing to accept a compromise figure. The Commission further was of the opinion that the crossing penalty placed upon the company was inequitable, inasmuch as these policemen served pedestrians and automobilists as well as street cars. They feel that certain economies unquestionably will result from unified operation which, in the long run, will redound to the benefit of the passengers. With more direct routeing and the resulting saving of time and the privilege of transfer between cars, the unified company will be in a position to render better service than that now being rendered by the competing companies.

Under provisions of the Act of March 4, 1925, however, no merger of street railway companies in the District of Columbia shall be finally consummated until approved by a joint resolution of Congress.

THUS the story of Washington's street railway merger becomes a thrice-told tale.

It was argued in March, 1928, before the Public Utilities Commission. At that time testimony was heard—1,526 full pages of it—from representatives of the contracting parties as well as from representatives of the 57 citizens groups and other interested associations. In April and May, last year, virtually the same arguments were heard by the House Com-

mittee on the District of Columbia.

And now the story is being retold before the Senate District committee.

The House Committee approved it. So did the Bureau of Efficiency, the Chamber of Commerce, the Board of Trade and other public-spirited organizations. The Senate Committee, after lengthy discussion finally approved the agreement, but only after several significant changes were made, chief among which was the elimination of the fixed valuation, the insertion of a provision that there should be no change in fares for two years instead of one, and the further provision that a new valuation should be undertaken immediately after the unification becomes effective. A few months ago it hired Dr. Milo R. Maltbie at a fee of $10,000 to make an impartial study of the companies and to report on the reasonableness from the public point of view of the merger plan. Dr. Maltbie's report took specific exception to the $50,000,000 valuation rate base. The committee seems to be inclined to go along with their expert's opinion, despite the fact that the people's counsel, an additional counsel attached to the Commission to represent the people of the District, approved that particular item.

Still another obstacle has been set up against the possible early approval of the agreement by the introduction of an amendment to the joint resolution submitted by Senator Blaine of Wisconsin providing for a valuation of the properties based on the amount of the "prudent investment."

There appears to be considerable opposition, both in and out of the committee, to this theory of valuation, but Senator Blaine threatens to oppose the merger unless his amendment is incorporated in the resolution. On the other hand, many more Senators will oppose it if Senator Blaine's amendment *is* included.

THE Act of March 4, 1925 specifically stated that any merger of the street railway companies shall be approved by a joint resolution of Congress. But Congress (that is, the two committees on the District of Columbia), have interpreted this law to mean that they shall sit as a court inquiring into the details of the agreement, thus usurping the prerogatives of the Public Utilities Commission which body was particularly created for that purpose.

Representative Frank R. Reid, of Illinois, in commenting on the procedure before the House Committee, was emphatic in his criticism:

> "That is what we organized the Public Utilities Commission for—to take away from Congress all this work that you now want us to do. Are we to say that we know more sitting around the committee table for weeks than they know in a year?"

The Public Utilities Commission has been clothed with authority, yet Congress, which granted that authority, has by its own action denied it to the Commission.

The situation in the District of Columbia warrants, for the sake of expediency and the elimination of duplication of effort, greater reliance on its Public Utilities Commission.

It may be said without exaggeration that had the Commission been allowed to function in the sphere for which it was created, without inter-

ference by other agencies, a merger of the street railway in Washington would have been brought about last year.

As the situation stands, the joint resolution now goes to the floor of the Congress where it may not receive final approval for another six months.

A Swiss Idea of "Public Utility Service"

PARIS has recently compelled its telephone operators to notify subscribers of the correct time. Berlin has gone further still; it requires its telephone operators to tell its subscribers what the weather is. But the city of Geneva, in Switzerland, has made a veritable public information bureau of its telephone exchanges. Here is a partial list of the information that may be obtained from central:

The exact time of day:
Information about meteorological conditions:
The address of the nearest doctor or pharmacy:
Election results:
Information regarding fetes, parades, sporting events, excursion trains:
The addresses of all persons who have telephoned a subscriber during that subscriber's absence from home.

Further; a subscriber, leaving town for a specified time, has only to ask it and Central will tell all his phone callers where he has gone, where he may be reached or when he will return. House-calls are switched to wherever the householder happens to be—if he so instructs.

The exchange will act as an alarm clock—if the subscriber needs one. If he suspects that servants are holding clandestine telephone conversations, the company's professional "listener-in" will inform the patron of what those conversations—supposing they exist—are about.

And as for local weather conditions, the operators in this city furnish offhand, information about the sort of weather that is being experienced by any section of Switzerland to which the patron may be contemplating a visit!

A Common Misconception of the "Room Count" Demand Charge

The Fallacy of Comparing It with the "Window Tax" of Mediaeval Days

By RICHARD LORD

HERE is something brand new so far as we know. A schedule of electric rates authorized by the Alabama Commission last December contained a demand charge based upon the well-known room count. Under flaming headlines an Alabama newspaper referred to this as "A house and room tax." The item observed that those who pay taxes expect something in return; that even the taxes paid on the number of windows in homes in mediaeval days in England went into the public treasury and that the notorious tea tax of pre-revolutionary days went into the public coffers. But nothing is given in return for this so-called "room tax" imposed by the Alabama Commission, as all of the money goes to a private monopoly.

Of course, those who are familiar with rate making know that a room count demand charge is neither a tax nor a charge imposed for the benefit of the utility. It is a charge designed to make consumers pay for something they receive, and so to prevent one class of consumers from sponging upon others. The newspaper reporter might be pardoned for not understanding that fact; but the amusing thing about his thunder against unjust taxation is that the "tax" of which he complains is optional. Rate payers are not required to take service on the room-count basis if they wish to continue under former schedules. We think there would be very little complaint against any kind of taxation if the government should say to the citizen: "You can pay this tax or not as you please."

Owing to newspaper misrepresentations the Alabama Commission has found it advisable to issue a statement that explains the optional nature of the room-count schedule, and stating that under it the owner of the humblest home in Alabama has now the same opportunity to use electricity at low rates as enjoyed by wealthy citizens. It was formerly necessary for the householders to purchase appliances (such as electric ranges) before they were able to secure a low rate. The present rate is available for all household uses, whether the appliances are large or small or even if only lights are used. Under the Commission order no customer has to take an increase on his bill.

Re Alabama Power Co. Dockets Nos. 5454, 5494, Dec. 31, 1928.

The March of Events

Railroad Mergers

A CONSTRUCTIVE move toward the merger of eastern railroads is seen in the recent applications by the Baltimore & Ohio and the Chesapeake & Ohio railroads for approval by the Interstate Commerce Commission of definite plans of consolidation and merger. Since the law of 1920 authorized large scale consolidations, subject to the approval of the Commission, several plans of combination have been proposed and rejected. The Commission, itself, gave out a tentative plan in 1921 in which the existing railways were divided into nineteen great groups, but this plan was not followed by the railroads.

The proposed plan of the Chesapeake & Ohio, which is owned by the San Sweringen interests of Cleveland, would give those interests complete control of eleven important carriers, and joint control of nine others, with a total mileage of 12,265 miles of rails under ownership or lease, and trackage rights over 883 miles. The capital investment for the system has been estimated at about $2,500,000,000.

The project of the Baltimore & Ohio would represent a capital investment of $2,192,036,343 and would include 13,814 miles of railroads and trackage rights. The Baltimore & Ohio, under this plan, would take over the control of ten railroads and obtain joint control of five others.

A feature of these latest proposals which bids fair to make the plans more successful than those offered in the past is the apparent willingness of the railroads to give the Commission a large degree of discretion in determining the methods of control, whether by lease, stock purchase, or otherwise.

Alabama

City Objects to Differential on Direct Current

THE Mobile city commission has resolved to seek relief from the Public Service Commission from the 20-per cent differential placed upon Mobile wholesale and retail business establishments using direct electric current. The city attorney has been directed to petition for a rehearing of the Alabama Power Company case in which the new rate schedules were established, to have state-wide effect.

Merchants have pointed out that at the time much of their equipment was installed the only current available in the downtown district was direct current, but with the development that alternating current could be manufactured more cheaply than direct current, it is said that the power company, in an effort to force all consumers on an alternating current basis, levied the 20-per cent differential against those using direct current.

Arizona

Hydroelectric Developments

THE most important development in the state at the present time is the Coolidge Dam, recently completed and now storing water. Two 7500 kilovolt ampere generators are being installed. No contracts for the sale of this power have as yet been made although it is quite possible, we are informed, that it

will be sold to the Nevada Consolidated Copper Company at Hayden, Arizona, and there tied in with the transmission system of the Salt River Valley Water Users' Association.

Another development of consequence is the construction of a dam and power plant at Stewart Mountain on the Salt river by the Salt River Valley Water Users' Association. This will be the fourth dam on the Salt river, the others being the Roosevelt Dam, Mormon Flats, and Horse Mesa. The construction of this new dam will provide irrigation to additional land in the Salt River Valley and will also furnish some additional power.

Some 600 or 700 miles of transmission and distribution lines are being built to provide electric service to the ranches and small settlements in the Salt River Valley, of which it is estimated there are about 3000 who are not now being served.

California

Gas Rate Reductions

SEVERAL reductions in gas rates have recently been made in the state. Commission orders reducing rates of several companies followed reductions in the price of fuel oil.

A hearing on rates of the Southern California Gas Company for consumers in Redlands, Riverside, San Bernardino, and adjacent towns, begun on motion of the Commission, was held on February 5th by Commissioner William Carr. After the introduction of some testimony, T. J. Reynolds, general counsel for the Southern California Gas Company, entered into a stipulation for a flat reduction of 10 per cent in domestic and commercial rates. Mr. Reynolds also promised on behalf of the company that after further study a reduction would be made in gas engine and industrial gas rates because of oil and gasoline competition.

Utility Construction Projects

THE Pacific Gas & Electric Company intends to construct a pipe line from Taft, Kern county, to San Francisco for the purpose of transporting natural gas from the Midway Oil Fields to San Francisco and vicinity. This is a major project and the introduction of natural gas into San Francisco is expected to prove of considerable importance industrially to that section of California.

The same company has announced its plans of enlarging its main steam plant in San Francisco to 300,000 kilowatt capacity. This would be by far the largest steam plant in Northern California, and its construction no doubt is to some extent associated with the introduction of natural gas into this territory.

The present condition of the oil market indicates that the differential is in favor of steam plants over hydroelectric, we are told, and in view of the fact that the choicest hydroelectric sites have been taken up and developed, it is not entirely beyond the realm of possibility that, for some years at least, additional electrical capacity will be brought in through the construction of steam plants. Of course, when oil prices are stabilized at a higher figure, the situation will again be changed in favor of hydroelectric; but, nevertheless, the availability of hydroelectric sites is growing less and less and, in consequence, more reliance is being placed upon other means of generation.

Connecticut

Manufacturers Seek Lower Electric Rates

THE Manufacturers' Association and the Chamber of Commerce of Winsted, the Winsted *Citizen* reports, have appointed a committee to see what can be done toward bringing about lower electric light and power rates. The committee believes that the reduction would be justified not only by reason of the earnings of the company but also because of additional business which the company would obtain if its rates were lower.

The services of Charles S. Reed, of New York, an engineer and rate specialist, have been secured. He is to represent the customers before the Commission and, if necessary, to carry the matter to the courts. The backers of the movement disclaim any intention to force unfair rates upon the company but complaint is made against the rate schedules being out of line with those in neighboring cities.

Illinois

Feeder Busses in Chicago

THE right of the Chicago Surface Lines to operate feeder busses on the northwest side has been upheld by Circuit Judge Otto Kerner, who on February 13th reversed the Commission order denying this privilege. A former order of the Commission giving the traction company the right to operate motor busses as feeders was approved.

The order authorizing bus operation had been later revoked by the Commission, and the Chicago Motor Coach Company had been granted the right to run busses over 34 miles of streets on the northwest side of the city. Attorneys for the motor coach company have announced that they would continue to operate busses pending an appeal.

Commutation Books for Street Car Riders

THE Commission has had under consideration a petition by the Illinois Power & Light Corporation for authority to issue commutation books, good for one month, containing fifty-two tickets at $3.25 a book for street car and bus rides in Urbana and Champaign. The present rate is fixed at 10 cents for a single fare or 50 cents for 8 rides and 25 cents for 3 rides.

John McKee, local superintendent of the Illinois Power & Light Corporation, states that the increased use of automobiles has so reduced revenues from car and bus fares that the company is not receiving a fair return on its investment, and that the commutation book plan was conceived with an idea of increasing business by reducing rates to 6¼ cents a ride for those who will ride $3.25 worth a month.

Indiana

Superpower Plant for Indianapolis

THE Indianapolis Power & Light Company will increase its generating capacity by the construction of a 160,000 kilowatt superpower plant on the White river, five miles from the heart of the city of Indianapolis, it is reported in the New York *Evening World*. The new plant will be rated as one of the largest in that section of

the country and will give the company a surplus generating capacity sufficient to take care of an anticipated increase in the demand for current.

The company has arranged to build a high voltage transmission line encircling the city to take care of the demand for current in the Indianapolis region, which embraces thirty-four small communities as well as the city proper. The lines will be connected through the American Gas & Electric Company and other large transmission systems through to Pittsburgh, so that it will be physically possible for the White river plant to supply current to that city and other communities in Western Pennsylvania.

Court Will Hear Appeal from Water Rate Order

JUDGE Lawrence V. Mays on April 1st, in the superior court at Anderson, will hear the appeal of the city of Elwood from the decision of the Commission establishing a 37½ per cent increase in rates of the Elwood Water Company. The appeal has been on the docket since September 22, 1928.

An injunction restraining the company from collecting the higher rates was denied when the city filed its appeal and the customers, with the exception of the city, have been paying the higher rates. The city council, however, has refused to pay its bills.

Kentucky

Ordinance Raising Car Fare Proposed

THE Louisville Railway Company on February 11th sent to the Louisville council a proposed ordinance fixing a street car fare of 10 cents. The company, in its petition for the enactment of the ordinance, said that it would like that base rate with the understanding that it would experiment with reduced rate tickets.

President James P. Barnes, of the company, in a letter to the mayor said that the earnings during 1928 were 3.2 per cent and he estimated the increase asked for would yield 5.4 per cent on a base value of $28,000,000. The Louisville *Courier-Journal* tells us that those in close touch with the situation believe that the company has set a figure on the value of its property to be aimed at and traded on, rather than with the expectation of having it adopted. City officials have said that whatever is done will be done as expeditiously as possible without jeopardizing the city's rights.

Louisiana

Commission Needs Additional Funds

FRANCIS Williams, chairman of the Louisiana Public Service Commission, in a letter to the State Board of Liquidation on February 6th, says the Baton Rouge *State Times*, made a new application for a loan of $15,000 for the operation of the Commission.

According to Chairman Williams the Commission's funds had dwindled to $1,927.28, and no funds would be available this year except from the public utilities on assessments not delinquent until December 31st. Two previous efforts to get the loan were turned down by the board, Governor Long holding that the Commission's balance of $5,000 at that time should first be expended.

Important railroad rate cases before

the Interstate Commerce Commission cannot be carried on without funds, says Commissioner Williams. The application of the Southern Bell Telephone & Telegraph Company for an increase in rates in Shreveport and numerous bus and motor freight lines cases must also be financed.

Maine

Separate Valuation of Water Plants Demanded

THE communities affected by the proposed merger of 15 Maine water utility companies with the Maine State Water & Electric Companies as a holding company have requested an impartial valuation of the individual utility companies. The Commisison has been holding hearings on the consolidation proposal.

Several of the communities, says the Portland *News,* are so much disturbed over the entire proposal that they have asked Representative Kitchen, of Presque Isle, to introduce a bill which will permit local communities to organize water districts under the general law, with the supervision of the attorney general's department and the Public Utilities Commission, instead of being required to come to the legislature as at present.

Maryland

Approval of Power Combine Sought

THE Empire Public Service Corporation, which is capitalized at $28,000,000 and has utility operations in seven states and 151 communities, has revived before the Commission efforts to purchase the Home Electric Light Company of Lonaconing, the Emmittsburg Electric Company, the Antietam Electric Light & Power Company, and the Midland Electric Light Company. The question of consolidation has been litigated in the courts for about two years.

A reduction of $50,000 in the purchase price is one of the principal factors introduced before the Commission as an inducement for the approval of the application. Objection has been made in the past by those opposing the consolidation, that the purchase price was exorbitant.

Massachusetts

Publication of Utility Reports

THE legislative committee on state administration on February 11th heard the petition of Nathan P. Avery, of Holyoke, for publication of the annual report of the Department of Public Utilities in sufficient numbers to be available for public distribution at cost. The petition was favored by Dudley P. Ranney, counsel for the Massachusetts Gas & Electric Association; Alexander Macomber, president of the Association of Gas Companies of Massachusetts; and Chairman Henry C. Attwill, of the Department of Public Utilities.

These reports, containing comparative statistical data on public utilities companies and decisions of the Department, were printed until 1922, at which time they were discontinued in order to reduce the cost of state printing. The utilities have consequently been handi-

capped in obtaining data necessary to the conduct of their business, and the Department offices have been cluttered up with experts seeking information. No opposition to the petition appeared at the hearing.

State Phone Probe Disapproved

A PROPOSAL to investigate the rates and charges of the New England Telephone & Telegraph Company by a special legislative committee was turned down by the House on February 13th. Representative Anthony A. McNulty, of Boston, in support of the investigation, criticised the methods of the company and declared his belief that an investigation was needed and that the legislature should take this action.

In opposition Representative Thomas R. Bateman, of Winchester, House floor leader, said that the 1925 rate increase of the company brought only $35,000 of additional income during the first year, and that while this total had since been increased, the company had tried to hand it back through increased service. He contended that the investigation was unnecessary.

Hearing on Rapid Transit Bill

THE Boston car riders would face either a reduction of service or an increase in fare above the present 10 cents, if the legislature did not pass the bill before it proposing $50,000 rapid transit extension, according to Edward Dana, general manager of the Boston Elevated Railway Company, at a hearing on February 4th. Mr. Dana felt that any extension authorized should be borne in part by the car riders and in part by other interests benefited.

Gas Rate Changes Advocated

SPECIAL volume rates for large consumers were declared by President G. Warren Stiles, of the New England Gas Association, to be necessary, at the third annual meeting of the association which opened in Boston on February 7th. President Stiles, formerly of the Fitchburg Gas & Electric Light Company, said that with the new forms of rate structures which were everywhere coming into prominence there would be a tremendous growth in the gas industry, chiefly along the lines of the water heating and industrial load. He said in part:

"In almost every enterprise of the world, except that of the manufacture and sale of gas, it is recognized that the volume buyer is entitled to a lower price. This is an established economic law centuries old.

"The gas industry which is highly competitive not only to other fuel industries but to all manufactured products, services, and amusement enterprises, is the only one which is prevented by improper public understanding of the need of the case, from selling its commodity at a price that will show a profit both from the small user as well as the large user. Important structural rate changes were needed in many parts of the country, but particularly in certain parts of New England, not only because of this competitive situation, and because the present form of rates generally failed to meet this competitive situation, but more particularly because the new rates will permit people of moderate circumstances to enjoy the benefits of house heating and water heating by gas.

"Furthermore if the industry is to continue to prosper it must find new outlets for business to offset losses it has sustained in its domestic lighting load, and without an equitable and economic rearrangement of the rate structure, this new business cannot be obtained."

Minnesota

No Appeal from Fare Order

THE Minneapolis city council has virtually abandoned the plan to appeal to the District Court from the recent Commission order fixing the 7½-cent token and 10-cent cash street car fares. City Counsel Neil M. Cronin advised the council that nothing would be gained by an appeal to the courts.

A motion presented by Alderman E. J. Sweeney which would have established a rate of fare at 5 cents and required the public to make up by taxation the difference between the return received and the return to which the company would be entitled, was tabled by the council on February 6th.

Missouri

Bill to Limit Commission's Powers

AN amendment to the Public Utilities Law has been proposed by the city of St. Louis. The bill would require the Commission to hold public hearings in rate cases following protest or complaint from the affected city, town, or village, or twenty-five consumers. The companies would be compelled to sustain the burden of proof in support of rates under attack. The Commission would be curbed in valuation proceedings and would be required to make detailed explanation of its appraisals and give particular reasons for making any allowance for going value. The rate of return would be limited by statute to 7 per cent.

Ten-Cent Fare Asked in Kansas City

A NEW schedule of car fares setting up a one-fare area over Kansas City and applying a straight 10-cent fare to all street cars and feeder busses, with common transfers, has been sent to the Commission by the Kansas City Public Service Company. Hearings on the proposal will probably be held, although the schedule is formally dated for effect on March 14th.

The adoption of the new schedule, says the Kansas City *Star*, would mean a substantial increase in the transportation cost for a majority of car riders, while there would be an actual gain to a small group of patrons who now pay extra cash fares coming from the Dodson or Independence lines. Also the transferring between street car and bus motor lines would be simplified. Street car tickets now sold 15 for $1 and street car tokens now sold 2 for 15 cents would be abandoned.

The new schedule contains an advance in fares for children from 4 cents to 5 cents, and blocks of tickets would no longer be sold at 30 for $1. The age limit for free rides would be dropped from eight to five years.

The company in support of this request for higher fares recites the franchise burden and also lists improvements aggregating $835,000 as being most actively sought. These include certain double tracking, reconstruction of lines, the acquisition of new cars, and participation by the company with other interests in the building of a viaduct.

New Jersey

Report on Gas Rates

THE engineering firm of Lucas & Luick, of Chicago, engaged by the State Board of Public Utility Commissioners to study the application for new gas rate schedules by the Public Service Gas & Electric Company, reported that the new schedules were fair and that the company was entitled to $2,000,000 more in annual income than was asked for in the proposed schedules. One of the effects, according to the report, will be to shift from the larger consumers a portion of the cost of service occasioned by the smaller consumers, which costs are now borne by the larger consumers. The report continued:

"Since it tends to mitigate a discriminatory condition which now exists, we believe that the change is required in fairness to the larger consumers, particularly in view of the fact that, even, under the proposed schedule, the larger consumer will not be entirely freed of the burden of carrying some of the costs incurred on account of the smaller consumer.

"We are further inclined to suggest the acceptance of the company's schedule because of the fact that it is our belief—as it is that of the company—that the type of schedule proposed will serve to increase the company's sales for water heating, gas refrigeration, house heating, and for commercial and industrial uses, since the potential users of this class of service will find it attractive to use gas under the schedule proposed."

The hearing on the gas rate increase scheduled for February 16th was postponed until April 3rd in order to give objecting municipalities an opportunity to study the report. A proposal has been made to engage experts to study the situation and report back to the League of Municipalities before the next hearing.

New York

Increased Powers Asked by Commission

THE Public Service Commission in its annual report submitted to the legislature on February 14th asked for amendments of the law materially enlarging its jurisdiction. The Commission recommended that holding companies operating utilities be required to render adequate periodical reports to the Commission; that the Commission be vested with power to investigate the relationship between holding companies and the operating utilities they control, so that all contracts and agreements existing between them may be made a matter of public record; that the Commission receive further power to inquire into profits made by nonutilities from products or service furnished to public utility corporations; and that the definition of holding companies in any amendment enacted on the strength of these recommendations be made sufficiently broad to include not only holding companies exercising control over utility corporations through ownership of a majority of their stock, but also those which control through lease or operating contracts.

The Commission recommends in connection with the submetering of electricity that the law be amended to give it authority to test private meters used by submetering companies distributing current to tenants.

The recommendation is also made that the statute which at present prevents gas corporations from following the practice of electric light corporations in making a service charge to

consumers be repealed. The report pronounces the service charge a just and reasonable element in a rate schedule. A uniform rate for electric current throughout the state is advocated.

More complete legislation dealing with the regulation of motor carriers is also recommended, and the Commission seeks powers of regulation over airplanes engaged in business as common carriers. Such powers have been granted Commissions in several states.

Transit Control Bill Introduced

THE Board of Transit Control bill sponsored by the city of New York as a measure for the unification of transit facilities was introduced in the legislature on February 15th. The bill would shift from the Board of Estimate and Apportionment to the voters responsibility for deciding whether fares on lines should be raised or any deficiency in operation met out of public revenues.

Republican leaders, says the New York *Times*, are chafing under the delay in introducing the bill since they fear that, if it should prove impossible for the legislature to act on the city legislation, they may be blamed this year as they were last year for the failure to pass the legislation demanded by the city. Republican leaders are said to be in no mood to accept the bill unless it is amended to provide for a rate of fare sufficient to pay for operations and financing without resort to taxation. In its present form the bill provides for a 5-cent fare during the experimental period with a later alternative of the taxpayers being called upon to make up any deficiency in the returns on the traffic. Members of the Board of Transit Control would be appointed by the Mayor. The mayor, comptroller, president of the board of aldermen and chairman of the New York board of transportation would be ex-officio members of the board, with not only a voice but also a vote in its deliberations.

Power to issue bonds would be given to the board and bonds issued by it would be legal investments for state or municipal sinking funds and for banks, trust companies, savings banks, savings and loan associations, insurance companies and fiduciaries. These bonds would be free from taxation or assessment by the state or any of its subdivisions in the same way that state and municipal bonds are exempt.

Utica Rate Case Begun

THE investigation of the rates of the Utica Gas & Electric Company was begun before Commissioner Neal Brewster on February 12th. The first conflict was over the question whether gas rates or electric rates should be first investigated. City officials asserted that they were not prepared to carry on their attack on the gas rates at the time, and that their entire investigation and efforts had dealt with electric rates. Utility company representatives, on the other hand, maintained that they were not prepared to proceed with the electric rate case as they had devoted their entire time to preparation for a defense of the gas rates.

Commissioner Brewster permitted the company to introduce evidence in the gas case, and then an adjournment was taken until April 15th to give the city an opportunity to prepare its attack on the rates. Electric rates will receive attention afterwards.

Pennsylvania

Revolt against Water Bills

THE temporary increase in water rates of the Scranton-Spring Brook Water Company which is in effect pending the final disposition of the case by the Commission has aroused the antagonism of private and public consumers who have received larger bills for water. The Wilkes-Barre School Board announced its intention to refuse payment of its bills and leaders in the fight against the water rate increase have called upon the citizens to withhold payment of their bills until the controversy is settled. They believe that for the company to attempt to turn off water for nonpayment of bills will instantly arouse police and health officials of the municipalities and the state.

Many municipalities, it is reported, have already passed ordinances authorizing proceedings for the acquisition of the local water works. The appraisals and other evidence introduced in the rate case would be available in condemnation proceedings.

Five-Cent Fare at Expense of Taxpayers

THE Broad street subway in Philadelphia can be successfully operated by the city on a 5-cent fare basis, providing the Philadelphia Rapid Transit Company and its subsidiaries are left out of consideration, it was announced recently by Director of Transit Myers. *But the taxpayers must pay* interest and sinking-fund charges amounting to $4,500,000 a year. This was brought out, it is reported in the Philadelphia *Evening Public Ledger,* in a discusison of the Broad street tube audit ordinance on February 14th.

The ordinance was finally passed after considerable quarreling between city officials. It authorized continuance of the contract with Ford, Bacon & Davis, public utilities experts and engineers, who are consulting advisers for the transit department in studying the problem of tube operations as they will affect a proposed lease to the transit company. This work is not a city audit but an expert engineering study.

Texas

Utility Control Bill Reported

A PUBLIC utilities regulatory bill was reported by the Senate State Affairs Committee on February 7th. The bill provides for a Public Utilities Commission of three members, at an annual salary of $10,000 each, with a staff of assistants and experts, to regulate public utilities; but municipally owned utilities are exempt. Original jurisdiction would be given in all incorporated towns, meaning those of 2000 population and less, under the statute and appellate jurisdiction over all incorporated places.

The indeterminate franchise feature is omitted. It is provided that on application of a second utility for a permit in the same town for the same type of service, it must be granted, but on condition that the business of the existing company be taken over by the applicant.

A utility would be permitted to suspend a municipally adopted rate by putting up a bond for the indemnifying of patrons during the pendency of litigation.

The bill as reported is patterned largely after the recommendation of Governor Dan Moody as carried in the

Holbrook measure, but a number of changes have been made and the various interests are in disagreement. Governor Moody, at a session of the Texas Press Association on February 8th, declared that no city was in a position to cope successfully with the public utility companies in the setting up of equitable rates, and that the only solution of the problem lay in the establishment of a State Commission that would be powerful enough to regulate the utilities. This would be in accord with the practice in a large number of states.

Virginia

Gas Franchise Granted

A FRANCHISE for the construction and operation of a gas line was granted by the Waynesboro city council to the Consumers' Utilities Company on February 7th. The franchise, says the Staunton *News-Leader,* was sold for the sum of $200 and would run for thirty years. It carries with it a clause requiring the payment of 1 per cent of the yearly gross receipts for the sale of gas to the town of Waynesboro.

Gas will be piped from the plant at Staunton and then fed into smaller mains at Waynesboro. Carl Riddleberger, manager of the company, announced the intention to start work on the project as soon as possible with the hope that gas may be available in Waynesboro by June 1st of this year at the latest.

Electricity on the Farm

AT a conference held in the office of Governor Byrd on February 15th, representatives of farm organizations, electric light and power companies, and state officials agreed that the governor appoint a committee to settle the question of rural electrification in the Old Dominion, with the view of creating a system that would prove mutually profitable to the farmers and utilities alike.

If the preliminary plans laid down at this conference mature, Virginia farmers no longer will have to pump water to their stock by hand or separate cream for market in the family kitchen by the old slow method. Electricity will become the hired man.

Wisconsin

City Accepts New Light Rate

THE city of Mauston on February 14th, when it accepted a rate reduction offered by the Wisconsin Light & Power Company, brought to a close litigation which has been in progress for about two years. Previous offers to reduce rates had been refused because the reductions were not considered sufficient. The company has agreed, says the Milwaukee *Journal,* that except in case of great economic upheaval the rates shall not be raised, and it also agrees that in case rates are reduced in any city of 10,000 population or less in which the company operates, the rates will be lowered accordingly in Mauston, in case the rates there at that time are higher than those put into effect in the other city.

The controversy started when the city held a special election and voted to acquire the power company's property in an effort to drive down the rates. The matter was finally taken into the circuit court, the city winning after a long contest. The company appealed, however, to the supreme court, meanwhile making repeated offers of small rate reductions which were turned down.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 1929A NUMBER 5

Points of Special Interest

THE *decisions, orders and recommendations of Courts and Commissions, as printed on the pages following, conform to the standard size, proportions, and typographical arrangement observed in law reports generally. The pages are numbered, for the purpose of citation, as they will later appear in the bound volumes*

Public Utilities Reports, Annotated

MISSOURI PUBLIC SERVICE COMMISSION.

RE LACLEDE GAS LIGHT COMPANY.

[Case No. 5217.]

Evidence — Admissibility — Cost of labor.

1. The Commission questioned the accuracy of the features of a gas company's figures as to labor costs in a valuation proceeding based upon the four months of the year which were the worst of the year for open ditch construction work, p. 578.

Valuation — Reproduction cost — Cast iron pipes — Water.

2. The Commission in endeavoring to determine a fair value of gas utility properties as of a specific date will not estimate the cost of cast iron pipes upon a spot reproduction cost as of that date, but will endeavor to determine a fair value of such a commodity that would hold for a reasonable period in the immediate future, p. 579.

Valuation — Going value — Specific application.

3. Going value is peculiar to each and every valuation and can only be determined from the evidence and the facts submitted at the particular proceeding, p. 581.

Valuation — Going value — Gas utility.

4. An allowance of $5,818,000 was made for going concern value of a gas utility having a total rate base of $47,000,000, p. 581.

Depreciation — Percentage allowed — Gas.

5. A gas company was directed to set aside a sum equal to one and one-half per cent of its depreciable property as a depreciation reserve, p. 581.

Depreciation — Improper accounting — Gas utility.

6. A gas utility was directed to increase its depreciation reserve fund to include sums transferred by the company to its contingency fund and otherwise improperly charged to its depreciation reserve, p. 581.

Depreciation — Retirement of property not provided for.

7. A utility will not be allowed to make full deduction from its depreciation fund for the retirement of property constructed prior to the organization of such a fund, and its present consumers will not be compelled to pay for the failure of the company to protect the investment in the past, p. 581.

Return — Reasonableness — Commission findings.

8. The Commission in finding that a certain return will be reasonable for a utility does not guarantee that the company will ever earn such a rate, p. 582.

Return — Reasonableness — Past losses and profits.

9. Past earnings of a company, when found excessive, cannot be taken from such company for the benefit of future consumers, and likewise future consumers will not be required to reimburse the company for past losses, p. 584.

Return — Operating expenses — Cost of gas.

10. The Commission will disallow the added costs where the policy of a gas company in paying a price for gas that appears in excess of its cost to manufacture indicates that future operating expenses will not be benefited to the extent of off-setting the increase, p. 585.

Rates — Minimum charge — Small consumers — Gas.

11. The Commission found as a fact that with a relatively small minimum monthly charge a gas customer may, by using the amount of gas allowed by the minimum charge, get service for which he does not fully pay, p. 585.

Rates — Apportionment as a whole.

12. Rates are made to apply to a class of consumers as a group and not to individual consumers, p. 585.

Discrimination — Rates — Gas.

13. There must necessarily be some discrimination between individual consumers within a given class, but so long as the discrimination is not unfair or undue the rates may be taken as fair, p. 585.

Valuation — Going value — Promotional rates.

14. If the small customer is made to bear the cost of promoting a new class of customers or business, the going concern value later accruing in that new business should belong to the small customers and not to the utility, p. 586.

Apportionment — Allocation of expenses among customers — Gas.

15. It is necessary, in drafting a rate schedule, to allocate the production cost of the system to the various customers on the basis of their respective demands, whether domestic, industrial or house heating, p. 587.

Apportionment — Gas plants — Classes of customers.

16. The sum of the individual demands of the customers in any one class produces the total demand made by that class on the distribution system, which can thereupon be allocated to various classes of customers, and from that the part that each customer should bear can be deducted, p. 588.

Service — Gas — Minimum installation.

17. There is a minimum practical limit below which the company cannot economically go in the installation of services and meters, that minimum service and meter in the instant case being sufficient to serve a customer who would require 94 cubic feet of gas per hour, p. 588.

Rates — Cost of service — Cost of gas mains — Demand.

18. The size of mains and trunk lines of a gas system is not fixed by the size of meters and services but by the integral part of all of the actual demands of the various consumers, the diversity of their demands having an important part in fixing the size of main required; and rates and charges should reflect such conditions, p. 589.

Apportionment — Cost of service — Billing — Gas utility.

19. General administration expenses such as meter reading, billing, collecting, and consumers' complaints caused by each consumer regardless of whether the gas is used or not should be divided equally among

all meters in addition to the investment as allocated to each consumer, and the consequent fixed charges should be borne by each consumer, p. 590.

Rates — Service charge — Gas utility.

20. The service charge to the smallest consumer of a gas company, computed by adding the monthly cost to the company of his service and meter installation, plus the cost of his demand on the utility's system, plus his share of the general administration expenses of the company including a reasonable return and depreciation on such investment, was found to be 50.69 cents, p. 590.

Rates — Service charge — Minimum charge — Gas.

21. A company which has been allowed relief from the expense of the small domestic consumer or the so-called "convenience user" through the allowance of a monthly service charge adequate to cover the fixed cost of such service should not be allowed, in addition, to tax consumers through a minimum monthly charge for gas which they do not use, p. 591.

Rates — Preference for minimum charge — Service charge — Gas.

22. The minimum charge per month, which allows the consumer to take earlier advantage of a lower step in the rates but which is also adequate to cover the expenses of serving the individual consumer, is preferable to the so-called service charge, where the resulting revenue is practically the same in either case, in view of the popular misunderstanding of the bare service charge, p. 591.

Return — Percentage allowed — Gas utilities.

23. A gas utility was allowed to file for approval a schedule of rates calculated to produce a return of 7½ per cent on the fair value of its property, p. 591.

Rates — Sliding scale — Load factor — Gas.

24. Owing to the difference in load factor and diversity factor of the various consumers of a gas system, a schedule containing a sliding scale of rates was found to be necessary in order to avoid discrimination between classes of consumers and between individual consumers, p. 591.

Depreciation — Relation between accrued and annual depreciation — Gas.

Discussion of the relation between accrued and annual depreciation which should be reflected in the findings of value for rate-making purposes, p. 597.

(CALFEE, Commissioner, dissents.)

[January 15, 1929.]

APPLICATION of a gas company for increased rates; rates adjusted according to opinion.

Porter, Commissioner: On April 25, 1927, the Laclede Gas Light Company of St. Louis, Missouri, filed with the Commis-

sion proposed new schedules of rates and charges for gas at St. Louis, Missouri, and proposing to furnish gas of a monthly average heating value of 570 B.T.U. when delivered at holder pressure. Said schedules are entitled:

General Gas Service

Residence Heating Service

Industrial Service

On May 7, 1927, the city of St. Louis, Missouri, filed its motion for leave to intervene in this cause and asked the Commission to suspend the proposed schedules of rates and charges for gas service and the proposed reduction in heating content of the gas, and to conduct hearings for the purpose of determining the reasonableness of said schedules of rates and charges.

On May 11, 1927, the Commission issued its order suspending the effective date of the proposed schedules of rates and charges for one hundred and twenty days.

The Commission by its order of June 15, 1927, directed its accounting department to make an audit of the books and records of the Laclede Gas Light Company, in order to determine the net amount of additions and betterments made to the property of said company since the date of the last audit made by the Commission's accountants; to determine the operating results of the company's property for the year 1926, and for as many months of 1927 as were available; and to secure such other information of benefit to the Commission in its consideration of the matters herein.

On September 8, 1927, the Commission again suspended the schedules of proposed rates and charges herein for a period of six months or to and including March 11, 1928.

On February 28, 1928, the city of St. Louis and the Laclede Gas Light Company filed stipulation with the Commission in which it was agreed that the suspension of proposed rates ordered by the Commission should continue after March 11, 1928, and until such time as the Commission shall complete its investigation and issue its order therein.

Hearings were held in this cause before members of the Commission at its hearing room in Jefferson City, on the 14th day of May, 1928, and on June 18 to 26 inclusive, at which times

the audit of the Commission's accountants, and testimony by all interested parties was heard and evidence submitted. Briefs and reply briefs were submitted by both the city of St. Louis and the Laclede Gas Light Company. Oral argument in the matter was heard on the 14th day of September, 1928.

The main issues in this case are:

(1) Value of the property,
(2) Annual depreciation allowance,
(3) Rate of return,
(4) Manner and cost of operation,
(5) Reasonableness and structure of proposed rates.

Value of Property

The Commission, by its order of November 20, 1926, Case No. 1673, 16 Mo. P. S. C. R. 114, P.U.R.1927B, 1, 42, found the following facts and value of the gas department of the Laclede Gas Light Company, as of October 1, 1925:

Original cost of physical property, except land and including cost of consolidation	$28,500,000
Cost of reproduction of physical property, except land	45,400,000
Accrued depreciation	5,000,000
Cost of reproduction of physical property, except land, less accrued depreciation	40,400,000
Market value of land	2,687,131
Going value	5,818,000
Present fair value as of October 1, 1925	45,600,000

The above figures are based, for the most part, on engineer's appraisals as of date December 31, 1923, and audits by the Commission's accountants to September 30, 1925.

The last audit of the Commission's accountants, being Commission's Exhibit No. 1 in this case, shows the net additions to the property of the company from October 1, 1925 to August 31, 1927, is the sum of $2,713,311.95.

Company's Exhibit No. 1 shows that the book value of its property as of December 31, 1927, is $48,819,073, and on company's Exhibit No. 8, the value is shown to be the sum of $48,522,881 when based upon the audit of Commission's accountants.

City's Exhibit No. 21 shows that the value of the property as of December 31, 1927, is the sum of $48,519,625, or $3,256 less than the sum found by the company.

The city contends that rates should be based on a fair return on the fair value of the property and that it is improper to consider the fair value as found by the Commission as of October 1, 1925, plus additions, without considering changes in costs since said date.

City's Exhibit No. 17 purports to show the reduction in the cost of cast iron pipe mains since December 31, 1923, that being the date of the Commission engineer's reproduction cost appraisal. This exhibit shows that it is estimated the present cost of reproduction of cast iron pipe mains is $8,754,974 or the sum of $3,233,617 less than estimated by the Commission's engineers as of date December 31, 1923. By applying the same percentage to the reduced cost that the Commission's order in Case No. 1673 indicates in finding its fair value, the city claims $2,974,928 should now be deducted from the fair value found by the Commission as of October 1, 1924, to cover the reduced cost of cast iron pipe mains.

The city bases its claim for the above reduction in cost on the percentage of decrease in the cost of cast iron pipe and the experience of the city in laying cast iron pipe mains.

City's Exhibit No. 17 shows its engineers have used $39.10 per ton as the average present cost of 6-inch and larger class "B" gas pipe f. o. b. St. Louis and $60.04 as the average 1923 cost of the same class of pipe. Both estimates are the quotations as given in "Engineering News-Record" magazine.

City's Exhibit No. 17 also shows that the city owned water works plant is now laying cast iron pipe mains at 70 per cent of the cost of doing similar work during the year 1923.

Company's Exhibit No. 11 is a comparison of the cost of cast iron pipe mains as found by the Commission's engineers as of December 31, 1923, and the present. The exhibit is as follows and shows the costs of 6-inch and 12-inch cast iron pipe mains have increased since 1923. Present costs purport to be from company records of actual costs.

	Average 6-inch Year 1923	Four Months 1928
Labor per foot	$.647	$.956
Cast iron pipe per foot	.841	.628
Cost of labor and pipe per foot	$1.488	$1.584
Total cost per foot—6-inch	1.962	2.172
Total cost per foot—12-inch	3.882	4.944

Testimony in support of the claims of the city and company offers very little as to the detailed charges that have been included in their respective costs of mains.

The method employed by the Commission's engineers in arriving at the reproduction cost of cast iron pipe mains as of December 31, 1923 was as follows:

Costs are for the most part the averages of the actual costs to the company of all pipe laid during the year 1923.

The details of the unit costs in place per lineal foot for 4, 6, and 12-inch cast iron pipe are as follows:

	4-inch	6-inch	12-inch
Pipe f.o.b. St. Louis $57.76 per ton	.5496		
Pipe f.o.b. St. Louis 54.60 per ton		.8424	
Pipe f.o.b. St. Louis 52.40 per ton			1.9404
Direct labor	.7108	.6761	1.0383
Haul	.0423	.0245	.0695
Tools	.0318	.0293	.0475
Direct labor overheads	.1899	.1879	.3020
Lead	.0008	.0022	.0236
Jute	.0046	.0048	.0080
Cement	.0041	.0039	.0057
Blocking	.0027	.0033	.0091
City inspection	.0193	.0247	.0509
Miscellaneous	.0052	.0104	.0204
Store room and handling	.0283	.0429	.0993
	$1.5894	$1.8524	$3.6147

The cost as determined by Commission's engineers is, therefore, $1.01 per lineal foot for all items of 6-inch pipe except the cost of pipe.

Company's Exhibit No. 11 shows the present cast of comparable items to be $1.544 per lineal foot or 52½ per cent increase over the cost found by Commission's engineers.

The company was paying the following labor rates as of September 1923, and working nine hours per day.

Foremen $120 to $170 per month

Fitters .40 to .56 per hour

Caulkers .54 to .60 per hour

Laborers .44 to .49 per hour

The record does not reveal the present wages paid by the company but does indicate an increase over 1923.

Mr. Foley of the city's water department testified that the city is now paying more for labor than in 1923, the comparison being as follows:

	1928	1923
Foremen per month	$135 to $165	$125 to $155
Monthly men per month	$135	$116 to $126
Common labor per hour	.55–.62½–.75	.57½–.67½

Mr. Foley testified that the increased use of ditching machines and air operated tamping and excavating tools are the principal factors in the reduced labor costs of laying mains.

The testimony of the company indicates the same organization and methods of laying mains are now in use as in 1923.

The cost of 6-inch and larger cast iron gas pipe f. o. b. St. Louis on December 1, 1927, and January 1, 1928, as quoted in the "Engineering News-Record" was $36.10 per ton. The average of the quotations in said publication covering 6-inch and larger gas pipe, f. o. b. St. Louis for the year 1927, is $43.14 per ton, and the average for the twelve months ending June 30, 1928 is $39.10 per ton. Company's Exhibit No. 17 is a quotation from the American Cast Iron Pipe Company dated May 24, 1928, and shows the price of 6-inch and larger cast iron gas pipe f. o. b. Birmingham, Alabama, to be $36 per ton at said date to which $5.60 should be added for freight to St. Louis.

The city's engineers use $39.10 per ton in their calculations, it being the average of quotations for the twelve months ended June 30, 1928.

Property Not Used and Useful

The city contends that there are a number of items of physical property appearing in the appraisal of the Commission's engineers as of 1923 and also included in the fair value as found by the Commission as of October 1, 1925, that should now be classed as unused property and deducted from said appraisal and fair value.

City's Exhibit No. 19 is a statement of the items and values

of property not now used and useful. A summary of said exhibit follows:

Water gas sets 8 and 9, station "A"	
Coal gas retorts, stations "A" and "B"	
Auxiliary plant of coal gas plant, station "A"	
Water gas, retort, purifier Nos. 4 and 5	
Buildings, station "A"	
Total of above	$727,691
Producer gas equipment	560,000
Land station "H" and coke station	198,149
Total of unused items	$1,485,840

City's Exhibit No. 20 graphically shows the dates that water gas sets and coal gas retorts at both stations "A" and "B" have been used and have been idle. It shows that water gas sets 2 and 3, station "A" have been idle since January 1, 1923; that water gas sets 8 and 9, station "A" have been idle since March 1, 1926; that water gas sets 4 and 5, station "B" have been idle since January 1, 1923; that the east stack of Rutger street coal gas retorts, station "A" has been idle since June 1, 1927, and the west stack of said retorts has been idle since January 1, 1923; and that the south stack of the coal gas retort, station "B" has not been operated since June 1, 1927.

The city contends that the producer gas equipment has a capacity of 21,000,000 cubic feet but since only one machine is now used that at least three-fourths of the total value of said equipment should properly be considered as not used and excluded from the rate base value.

The city contends that portions of the land at the coke station and station "H" are not needed, have never been used, and should be excluded.

The company's position with respect to the above items of property is that they are needed as stand-by equipment in case of failure of other gas making equipment, periodical repairs to other equipment, or failure of supply now received from other companies.

The city introduced as Exhibit No. 23 a paragraph from a prospectus of the St. Louis Gas & Coke Corporation, involving a bond issue, which stated that contracts had been made with the Laclede Gas Light Company and other companies for the sale by said Coke Corporation of $1,000,000 of gas and electrical

energy per year. The city contends this indicates said purchases would reduce the gas generating capacity requirements of the company.

City's Exhibit No. 24 is a letter from a stockholder of the Laclede Gas & Electric Company to the Utilities Power & Light Corporation, the parent company, in which inquiry is made concerning gas purchase contracts made by the Laclede Gas Light Company, and the letter of answer made by the Utilities Power & Light Corporation.

The letter of said Utilities Corporation states that certain portions of the coal gas retorts of the Laclede Company are more or less obsolete; that the cost of making gas in said retorts is approximately the cost of making water gas; and that the gas purchased under the contracts, will supplant a portion of the water gas and coal gas generated by the Laclede Company.

The Commission in its report and order in the recent valuation case of the Laclede Gas Light Company, fully considered the item of land again claimed by the city as unused and at that time it was found useful, and included in the value of the property.

Going Value

The Commission in its report and order of November 20, 1926, 16 Mo. P. S. C. R. 114, P.U.R.1927B, 1, found the present fair value of the gas department of the company as of October 1, 1925, to be the sum of $45,600,000, of which $5,818,000 is going value. Going value is approximately 12.75 per cent of the total fair value.

The city contends that $5,818,000 is excessive; that it is a larger percentage than this Commission has heretofore allowed in other cases; that it is larger than is usually allowed by other Commissions. In its reply brief it tabulates all cases digested in the Public Utilities Reports for the years 1920 to 1927 inclusive. The result of said cases gives the percentage allowance for going value at 4.4 per cent, and for all cases showing a value greater than $4,000,000, the going value is 4.3 per cent of the value when the Laclede Company is included, and 3.6 per cent when the company is excluded.

The city does not maintain that a percentage method is necessarily the proper one to use, but that the cases cited are indicative of what should be allowed.

The city contends that the item of going value should now be the sum of $1,912,000.

Annual Depreciation Allowance

The Laclede Gas Light Company was incorporated in 1857 and has since that date acquired the properties of other companies. The Laclede Company actually started operations and furnished gas in 1873.

The company began to accrue depreciation on its gas property on September 1, 1907. The amounts set aside each year, the property retirals each year, and the totals in the reserve fund at the end of each year from 1920 to 1927 are as follows:

Year	Amount Set Aside	Retirals	Total in Reserve End of Year
1919			$323,963.71
1920	$360,000.00	$103,494.52	580,469.19
1921	300,000.00	246,644.21	633,824.98
1922	413,782.50	520,139.42	527,468.06
1923	413,782.50	311,574.17	629,676.39
1924	413,782.50	205,168.02	838,290.87
1925	556,528.50	223,470.62	1,171,348.75
1926	413,782.50	275,900.56	1,309,230.69
1927	274,238.75	420,749.73	1,162,719.71

The amounts set aside and in the reserve for 1927 are taken from company's Exhibits 1 and 1-F. All other of above amounts are from audits of the Commission's accountants in this case and in Case No. 1673, *supra,* the latter being the company's valuation case.

The accountant's report and audit as of December 31, 1923, shows that the company in 1914, transferred the sum of $464,967.77 from the accrued depreciation account to a reserve for contingencies. Again in 1919, $92,656.64 was transferred from the depreciation to the contingency fund. The contingency fund was afterward transferred to surplus.

During the World War the company constructed a toluol plant, and in 1922, the portion of said plant not salvaged was written off and the amount of $278,652.24 charged against the depreciation fund.

The audit as of September 30, 1925, shows that the Commission's accountants made an adjustment in the reserve for depreciation due to the fact that the company had charged retirals at their replacement cost instead of at their original cost. The amount of this adjustment is $501,785.77. The last audit made by Commission's accountants is from October 1, 1925, to August 31, 1927, and the actual book figures as shown for the depreciation reserve are stated and the above adjustment is not carried along in said audit.

If the above transferred amounts and adjustments are returned to the depreciation fund the amount in said fund as of December 31, 1927, is $2,500,782.03.

The company estimates $1,450,000 worth of property will be retired during the years 1928 and 1929 and that such heavy retirals will soon exhaust the reserve fund.

Company's Exhibit No. 1-E shows the amount of depreciable property by accounts, the rate of depreciation as claimed by the company and the total requirement for depreciation each year for each class of property. The total yearly requirement claimed as necessary by the company is $849,586 which is approximately 3.2 per cent of the original cost of all depreciable property as of December 31, 1927.

Following is the yearly rate of depreciation of all classes of property as shown on company's Exhibit No. 1-E:

Structures	2	per cent
Boiler plant equipment	4	" "
Steam engines	5	" "
Internal combustion engines	4½	" "
Miscellaneous power plant equipment	5	" "
Benches and retorts	5	" "
Water gas sets and accessories	4	" "
Purification apparatus	3½	" "
Accessory equipment at plant	5	" "
Holders	2½	" "
Trunk lines and mains	1½	" "
Gas services	3½	" "
Meters	3½	" "
Municipal street lighting fixtures	3	" "
General office equipment	10	" "
General shop equipment	6	" "
General stable equipment	25	" "
Tools and implements	20	" "
Laboratory equipment	10	" "
By-product coke oven plant	5	" "
Miscellaneous equipment	8	" "

Company's Exhibit No. 10 was offered to show allowance made by other State Commissions and as considered proper by various authorities on utility valuation and depreciation. The exhibit also shows that said allowances are in close accord with the rate of depreciation of the company's property as determined by the company's chief engineer and shown on company's Exhibit No. 1-E.

City's Exhibit No. 1 is a study of depreciation and shows, among other things, that the total of credits to the company's depreciation reserve since 1907 has been $5,501,261. It also tabulates what the reserve would be if one per cent of the depreciable property investment had been set aside each year since 1890. This amounts to the sum of $5,763,814.

The city claims that interest derived from the depreciation reserve should be credited to said reserve, on the ground that the reserve is used by the company as working capital, making additions and betterments to the property, or in some other manner which adds to the value of the property and causes the consumer to pay a return on that portion of the reserve replaced in plant and thus partially finance the company without compensation. The annual credit for 1927 would thus be $414,970, using 5½ per cent as the rate of interest applied to the credit balance as of December 31, 1927.

Annual Rate of Return, Revenues and Expenses

Commission's Exhibit No. 1, being the audit of Commission's accountants, shows the net income available for return in 1926, after deducting depreciation and corrected by testimony of Commission's accountant, to be the sum of $3,227,280. Likewise the net income for the eight months ended August 31, 1927, to be the sum of $2,016,049, which extended to its annual equivalent is $3,024,074. The 1926 profit is 6.82 per cent on a valuation of $47,319,753 and the 1927 profit is 6.23 per cent on a valuation of $48,522,881.

Commission's accountants call attention to the following items included in their audit of operating expenses:

Radio broadcasting charged to new business expense and dis-

continued in May, 1927. The amounts included are $15,350 for 1926 and $5,000 for 1927.

The present chairman of the board of directors receives no salary whereas the ex-chairman received during 1926, the sum of $42,500 and in 1927, the sum of $21,500.

City taxes have been increased in 1927 by $233,100. The company has thus far refused to pay same and the matter is now in litigation. Commission's accountants have included $155,400 as a proportionate part of such taxes in their statement of operating expenses for the eight months ended August 31, 1927.

In May, 1927, the company began purchasing oil still gas from the Illinois and Missouri Pipe Line Company on a basis of 50 cents per thousand cubic feet of 1150 B.T.U. content. The gas purchased to September 1, 1927, averaged 1376 B.T.U. and cost an average of 59.83 cents per thousand cubic feet exclusive of laboratory and holder expense which averaged 1.7 cents per thousand feet.

On October 1, 1927, the company entered into a contract with the St. Louis Gas & Coke Corporation for the purchase of gas of average British Thermal Unit content of 570, at a price of 25 cents per thousand cubic feet for the first 150,000,000 cubic feet and 22½ cents per thousand cubic feet for all over 150,000,000 cubic feet. During December 1927, 31,862,000 cubic feet of this gas was purchased.

During the year 1926, the company made 8,096,308,000 cubic feet of gas at an average cost of 20.31 cents per thousand cubic feet exclusive of laboratory and holder expense.

Company's Exhibit 1-A shows the estimated increase in revenues under the proposed schedules to be the sum of $1,410,045.

Company's Exhibits 1-B, 1-C, 1-D and 2 are estimates and comparisons showing estimated increase in revenues under the individual proposed schedules.

City's Exhibit No. 22 is an estimate of the rate of return using present rates, the city's claimed value of $40,152,857, and the company's statement of operating revenues and expenses with the managerial fee of $200,000 deducted. The rate thus found is 7.44 per cent.

Manner and Cost of Operation

The city objects to the inclusion of the management fee paid by the company to its holding company, the Laclede Gas & Electric Company. The amount of this fee for the year 1927 is $212,000.

While the company has included said fee in the calculations set forth on several of its exhibits, it makes no claim for same in this proceeding.

The testimony shows that the company's business has had a normal growth during the past few years, that the costs of gas manufacture and gas distribution have remained fairly uniform, but that new business expense and miscellaneous general expense have had a noticeable increase.

City's Exhibit No. 5-A shows the above expenses have increased the price of gas 5.3 cents per thousand cubic feet since 1924.

Mr. White testified that general expenses were $85,000 in 1924 and $162,000 in 1926; and that new business expense was $41,000 in 1924, $177,000 in 1926, and $187,000 in 1927.

Commission's Exhibit No. 1 shows adjustments have been made to these items of expense and calls attention to other items as previously noted herein.

The city objects to the company being permitted to purchase coke oven gas from an allied company at 22½ and 25 cents per thousand when the same kind of gas can be made by the company at a greatly reduced cost.

Commission's Exhibit No. 1 shows that the cost to make coal and oven gas during 1926 averaged 10.99 cents per thousand cubic feet; that the cost to make water gas was 33.58 cents per thousand cubic feet; and that an average cost for all gas made was 20.31 cents per thousand cubic feet.

The city believes rate case expense should be distributed over a 10-year period or a sufficient period to repay the company without causing an abnormal charge in any one year to operating expenses.

City's Exhibit No. 28 is a statement of a rate case expenses incurred by the company from January 1, 1919 to December 31, 1927, the total of said expense being $561,968.81.

The company has been charging off this expense on a 3-year basis. Commission's accountants in their recent audit adjusted the remaining total to a 5-year basis and fixed the charge for 1926 at $65,755.71. At the end of 1927, there remained $197,-267 of this expense.

Reasonableness and Structure of Proposed Rates

The present schedule of rates for gas used in any one month by one consumer is as follows:

All minimum bills per month $0.50 net.

Where customer requires 0 to 200 cubic feet per hour, first 7,800 cubic feet used at $1 per M cubic feet, net. When customer requires 201 to 800 cubic feet per hour, first 11,100 cubic feet at $1 per M cubic feet, net. When customer requires 801 to 2,000 cubic feet per hour, first 20,300 cubic feet at $1 per M cubic feet, net. When customer requires 2,001 to 3,000 cubic feet per hour, first 37,400 cubic feet at $1 per M cubic feet, net. When customer requires a capacity per hour in excess of 3,000 cubic feet, the volume to be charged for at the initial rate shall be 37,400 cubic feet plus 1,000 cubic feet for each additional 100 cubic feet or fraction thereof of hourly capacity. Such volume used at $1 per M cubic feet, net.

For all customers, the rate for gas in excess of their initial charge shall be

Next 6,800 cubic feet at	$0.90	per M cubic feet, net
Next 50,000 cubic feet at	0.80	per M cubic feet, net
Next 100,000 cubic feet at	0.70	per M cubic feet, net
All additional cubic feet at	0.60	per M cubic feet, net

The proposed rates are grouped under the three headings of General Service Rates, Residence Heating Service, and Industrial Service.

The following rates are applicable to all general service customers:

For the first 400 cubic feet or less	$0.90	
For the next 14,600 cubic feet or less at	.95	per M cubic feet
For the next 50,000 cubic feet or less at	.85	per M cubic feet
For the next 100,000 cubic feet or less at	.75	per M cubic feet
For all over 165,000 cubic feet or less at	.60	per M cubic feet
Minimum charge per month per meter	$0.90	

Residence Heating Service

To customers contracting for gas service for residence heating

for residences containing at least 15,000 cubic feet of building volume:

Initial charge—For each 1000 cubic feet of building volume $0.45. Includes 500 cubic feet of gas per 1000 cubic feet of building volume.

Secondary charge—First 20,000 cubic feet in excess of that paid for at the initial rate, per 1000 cubic feet $0.75. All excess per 1000 cubic feet $0.60.

Minimum monthly bill shall equal the initial charge during the seven months, October to April inclusive.

Gas consumed during the months of May to September inclusive to be charged at rates in effect covering general gas service.

Industrial Service

Demand Charge:
First 50 cubic feet of maximum demand per month at $0.05 per cubic feet
Next 50 cubic feet of maximum demand per month at 0.03 per cubic feet
All over 100 cu. ft. of maximum demand per month at 0.02 per cubic feet
Commodity Charge:
First 75,000 cubic feet consumed per month at $0.75 per M cubic feet
Next 125,000 cubic feet consumed per month at 0.60 per M cubic feet
All over 200,000 cubic feet consumed per month at 0.50 per M cubic feet
3 Per cent discount on all except minimum bills if paid within ten days after date.

There are also certain miscellaneous rules governing the above rates.

The Commission will not burden this report with extracts or comments on the voluminous testimony offered by both the company and the city relative to the proposed rates.

CONCLUSIONS.

Present Fair Value as of December 31, 1927

One of the major elements that demands consideration in any proposed adjustment of rates, is the present fair value of the company. Our courts have so often expressed the opinion that a utility shall be allowed to earn a fair return upon a fair value of its property that the procedure is universally recognized.

The company contends that the Commission should determine the value of its gas department either by adding to the value found as of October 1, 1925, the net additions to the property, or make a complete revaluation of the property.

The city of St. Louis has introduced evidence showing the cost

of cast iron pipe and the labor of installing same, has materially decreased since October 1, 1925; that there are certain items of land and equipment that were included by the Commission in its determination as of October 1, 1925, that are now unused; and claims are made that such items are of such substantial value that they should be considered in a rate proceeding. The city also maintains that the amount of going value allowance should be materially reduced to correspond with allowances made in other cases by the Commission.

The Commission is of the opinion that both the company and the city are correct to some extent. The company has made application to file a new schedule of rates which, if made effective, would increase the cost of gas to a majority of the consumers. Said application is based on the statement that the company is not obtaining a fair rate of return on the fair value of the property. The burden of this proof rests on the company.

The city has furnished evidence that the cost of reproducing the company's distribution mains as of January 1, 1928, is less than at the time of appraising the property and fixing the fair value as of October 1, 1925.

City's Exhibit No. 17 shows the estimated unit cost of 6-inch cast iron pipe mains in 1927–1928 to be $1,347 per foot in place of which $.547 is pipe material, $.49 is labor and hauling, and $.31 is miscellaneous charges and the same amount as used by Commission's engineers in 1923 and detailed on page 5 of this report. The cost of pipe as used by the city equals $35.55 per ton f. o. b. St. Louis, or approximately the quotations of pipe on March 1, 1928, and the lowest quotation since November, 1916.

The company's Exhibit No. 11 shows the unit cost of 6-inch cast iron pipe mains during the first four months of 1928 to be $2.172 per foot of which $.628 is pipe material, $.956 is labor and $.588 is miscellaneous charges.

[1] The Commission has not been given a great amount of actual detail on which to base a correct cost of labor and miscellaneous charges but it is of the opinion that the company's figures are much higher than the yearly average due to the fact that they are compiled for four months that are considered the worst of the year for open ditch construction work.

The evidence shows that the city's labor costs have increased 10 per cent. The company claims to be laying its mains in the same manner and with the same forces as was used in 1923. The company's increased labor costs of over fifty per cent since 1923 hardly seem reasonable unless such costs are due to difficulties encountered during the winter and spring months.

Likewise it appears to the Commission that the unit costs to the city's water department must have charges omitted that are incurred by the company.

The record in this case has much to say by the city as to the skill and ability of the operating officials of the company and the Commission cannot believe that the company is spending twice what is necessary for labor on its mains.

[2] While the cost of cast iron pipe has materially dropped since 1923 and in the opinion of this Commission such reductions should be considered, the Supreme Court of the United States has said we must endeavor to fix a value that holds for a reasonable period in the immediate future (McCardle v. Indianapolis Water Co. 272 U. S. 400, 71 L. ed. 154, P.U.R.1927A, 15, 47 Sup. Ct. Rep. 144.) No doubt a spot reproduction cost estimate as of December 31, 1927, would compel the use of $36.10 as the cost of cast iron gas pipe per ton f. o. b. St. Louis. But the Commission is endeavoring to determine a fair value as of December 31, 1927, that will hold for a reasonable period in the immediate future. The record shows that the cost of cast iron pipe has gradually increased since December 31, 1927, and indicates that a staple cost will soon be reached.

During the years 1925 and 1926 the cost of said pipe averaged approximately $49.10 per ton and the Commission is of the opinion that $47 per ton for said pipe is a proper cost to use in estimating a fair value of this company's mains for rates in the immediate future.

In view of the above and all the evidence herein, the Commission is of the opinion that the fair value of the company's gas department as found as of date October 1, 1925, should now be reduced by the sum of $560,000 to cover reduced value of cast iron distribution mains.

The city's claims that certain items of property should be de-

ducted from the value of property used in public service appear well founded. City's Exhibit No. 20 shows graphically the use of water gas sets and coal gas retorts of the company during the period from January 1, 1923 to June 15, 1928. The company's president testified that the dates used in preparation of said exhibit were furnished by him. It shows that water gas sets Nos. 2 and 3, station "A" and the West stack of the Rutger street retorts have not been in use during the period from January 1, 1923 to June 15, 1928. During the same period water gas sets Nos. 4 and 5, station "B" have not been used except for approximately one week in August, 1925. Water gas sets Nos. 8 and 9, station "A" have not been in use since March 1, 1926, and the east stack of Rutger street retorts and south stack of station "B" retorts have not been in use since May, 1927, or approximately the date the company commenced their purchase of gas from the Illinois & Missouri Pipe Line Company.

City Exhibit No. 24 contains a letter written by the Utilities Power & Light Corporation, an allied company of the Laclede Gas Light Company, in which is stated, among other things, that the company's coal gas retorts are more or less obsolete and uneconomical to operate.

The testimony also shows the company has equipment used in the manufacture of producer gas that is almost entirely unused.

The Commission is of the opinion that the following property should be deducted from the value for rate-making purposes. The Commission does not believe any deduction should be made at this time for the item of land.

Water gas sets Nos. 2 and 3, station "A"	$31,000
Water gas sets Nos. 4 and 5, station "B"	40,000
Coal gas retorts and structures, Rutger street, station "A"	368,000
Producer gas plant	506,000
Total	$945,000

The above deductions are made on the basis of the fair value of the items as found by the Commission as of October 1, 1925.

The Commission will, therefore, deduct the sum of $945,000 from the value of the gas department of the company as determined as of date October 1, 1925, plus additions and betterments, for property not used in the public service.

[3, 4] The Commission allowed the sum of $5,818,000 for the item of going value in its determination of the fair value of the company's gas department as of October 1, 1925. The city now claims this allowance is excessive and should be reduced. City's estimate of going value as shown on their Exhibit No. 5-A is $1,990,000 and as shown on their Exhibit No. 21 is $1,912,000. The Commission allowed $5,818,000 as the proper amount for going value in this case after due consideration of all the evidence in the case. There has been a great deal of theory injected into the case at bar relative to what this Commission and other Commissions have allowed as going value in other cases, but going value is peculiar to each and every case and can only be determined from the evidence and facts submitted. There are very few if any real facts touching on the going value of this property brought forth at this time, and the Commission will not change the amount as found in its order as of date October 1, 1925.

A summary of the above findings follows:

Fair value as of October 1, 1925	$45,600,000	
Additions and betterments to December 31, 1927	2,922,881	
Total		$48,522,881
Deductions		
Reduced value of C. I. Mains	$560,000	
Unused property	945,000	
Total		1,505,000
New total as of December 31, 1927		$47,017,881

The Commission is, therefore, of the opinion that the present fair value of the gas department of the Laclede Gas Light Company, including all elements of property, tangible and intangible, and considering said property as a going concern in successful operation, is the sum of $47,000,000.

Annual Depreciation Requirement

[5–7] The company, by order of this Commission, is now setting aside as a depreciation requirement, a sum equal to one per cent of its depreciable property. The Commission is of the opinion that the present depreciation reserve fund should be increased to $2,500,782.03 as of December 31, 1927, to include sums trans-

ferred by the company to its contingency fund and otherwise improperly charged to its depreciation reserve fund.

The company has submitted considerable evidence relative to the exhaustion of their present depreciation reserve and states their estimate of the value of property to be retired during the years 1928 and 1929 is the sum of $1,450,000. The city counters by showing that if the company had started their depreciation fund during the early years of their existence, there would be a substantial and adequate sum in the reserve at the present time.

It is true that the present consumer should not be compelled to pay for the failure of the company to protect its investment in the past, and the Commission is of the opinion that a large amount of the property now being retired, was constructed prior to the organization of a depreciation reserve fund and on such items of property the company will not be allowed to make a full deduction from the fund, but notwithstanding this feature of the problem, the fact remains that both the company's witnesses and the city's witnesses testified in effect that the present allowance of one per cent will not adequately provide for future depreciation of a gas plant such as this company operates.

In view of this evidence and testimony introduced by both the city and the company, the Commission is of the opinion that in order to protect the gas property of the company, an annual depreciation allowance of 1½ per cent of the depreciable property is necessary.

The courts have said time and again that a utility is allowed a fair rate of return on the fair value of its property used and useful in the public service; that such rate should reflect the character and location of the business, the risk taken and all relevant facts in connection with said business.

The Commission by its order of November 20, 1926, 16 Mo. P. S. C. R. 114, P.U.R.1927B, 1, in the valuation case of this Company found that a reasonable return, at that time was within a minimum of 7 per cent and a maximum of 8 per cent of the fair value of the property.

[8] The Commission does not guarantee a certain rate and company's Exhibit No. 1 shows that the company earned but

6.04 per cent in 1926 and 5.66 per cent in 1927 on its book value. If operating expenses and property account are adjusted to correspond with the above findings of the Commission, it shows that the company earned a rate of return equal to 6.5 per cent in 1927.

The company now says the Commission should allow an 8 per cent return in order that the company may earn the average of the fair allowance of the Commission over a period of time. However, the company on its Exhibit No. 1 makes claim for only 7.37 per cent based on its book value, operating expenses and claimed depreciation.

The city's claim that 6 per cent is a fair allowance for rate of return at this time is based to a large extent on the present money market and the yields of gas bonds of a number of the larger gas companies of the United States.

The city's case appears to be practically identical with that of the appellants in McCardle v. Indianapolis Water Co. 272 U. S. 400, 71 L. ed. 154, P.U.R.1927A, 15, 31, 47 Sup. Ct. Rep. 144. In that case a study of the rates of yield to investors on 524 flotations of bonds between July, 1921, and February, 1924, inclusive was offered and Mr. Justice Butler, delivering the opinion of the Supreme Court of the United States said:

"It is obvious that rates of yield on investments in bonds plus brokerage is substantially less than the rate of return required to constitute just compensation for the use of properties in the public service. Bonds rarely constitute the source of all the money required to finance public utilities; and investors insist on higher yields on stock than current rates of interest on bonds. Obviously, the cost of money to finance the whole enterprise is not measured by interest rates plus brokerage on bonds floated for only a part of the investment. The evidence is more than sufficient to sustain the rate of 7 per cent found by the Commission, and recent decisions support a higher rate of return." Citations of numerous cases.

The Kansas supreme court in a decision handed down on June 9, 1928, in Wichita Gas Co. v. Public Service Commission, P.U.R.1928D, 124, 268 Pac. 111, accepts the above opinion in

McCardle v. Indianapolis Water Co. *supra.* Eight per cent was allowed in the Wichita case.

In Re Cumberland & Allegheny Gas Co. (P.U.R.1928B, 20, 86) the West Virginia Commission said:

"The mandate of the courts and the judgment of Commissions generally dictate a return of 8 per cent for natural gas utilities."

Other recent decisions in which the Supreme Court of the United States affirmed rates of return of 8 per cent are: Ottinger v. Brooklyn Union Gas Co. (272 U. S. 579, 71 L. ed. 249, P.U.R.1927A, 39, 47 Sup. Ct. Rep. 199) affg. [7 F. (2d) 628, P.U.R.1926A, 412]; Ottinger v. Consolidated Gas Co. (272 U. S. 576, 71 L. ed. 248, P.U.R.1927A, 37, 47 Sup. Ct. Rep. 198) affg. [6 F. (2d) 243, P.U.R.1925B, 773].

[9] The Commission as previously stated, cannot guarantee any definite rate of return. Its duty is done, when after careful consideration it fixes a fair rate of return. The management must then endeavor to earn the allowance. Furthermore, the Commission cannot fix a rate of return that will allow a utility to recoup any loss sustained by reason of its failure to earn what is considered fair. Past earnings of a company, when found excessive, cannot be taken from said company for the benefit of future consumers and likewise future consumers shall not be required to reimburse a company for past losses. See Public Utility Comrs. v. New York Teleph. Co. 271 U. S. 23, 70 L. ed. 808, P.U.R.1926C, 740, 46 Sup. Ct. Rep. 363.

Revenues and Expenses

The Commission's accountants estimated the net income for the year 1927 to be the sum of $3,024,074, which amount consists of $21,500 salary to the chairman of the board of directors and of $5,000 expense for radio broadcasting. These items of expense will not appear in 1928 and should be omitted from our calculations.

The city maintains that the cost of the gas purchased is greater than the manufacturing costs experienced of the company and that such purchases and costs are not extended over a long enough period to intelligently forecast the effect on the operating expenses.

The average cost of gas made during the year 1926 was 20.31 cents per thousand cubic feet exclusive of laboratory and holder expense which averaged 1.7 cents per thousand cubic feet. The contract price of gas purchased from the St. Louis Gas & Coke Corporation is 25 cents per thousand cubic feet for the first 150,000,000 cubic feet purchased in any one month and 22½ cents per thousand cubic feet for all over 150,000,000 cubic feet.

[10] The present method of estimating a correct schedule of rates will be based on the 1927 operating statistics and the future cost of gas will not appear and, therefore, if greater than the past, will in no way reflect a rate which would be unreasonable to the consumers. The Commission, however, looks with concern upon the company's paying a price for gas that appears in excess of their cost to manufacture, and if such costs should indicate the future operating expenses were not benefited to the extent of off-setting the increase, the Commission will disallow the added costs.

The Commission's accountants have found the total operating expenses of the gas department for the first eight months of 1927 to be $2,756,852, which extended to its annual equivalent is the sum of $4,135,278. In view of the evidence herein, the Commission is of the opinion that the sum of $4,100,000 is a fair amount of expense on which to base this proceeding.

Schedule of Rates

It will be noted that the present monthly minimum charge is 50 cents for which 500 cubic feet of gas is given, whereas the proposed minimum charge is 90 cents for which 400 cubic feet of gas is given. To support its claim that the monthly minimum charge should be 90 cents, the company has allocated its property and operating expenses in accordance with the theory known as the three-part rate theory, and deduces a result tending to show that if the rates were to be built upon said theory, the minimum charge would be 90 cents. The company does not seek to put into effect a three-part rate schedule but uses that basis of allocation of costs to show what the minimum monthly bill should be, particularly for the small customer.

[11–13] The company contends that it has on its system a

large number of customers who use very little gas, so small an amount that the revenue received from this class of customers as determined by the present rates does not pay for the service rendered such customers. Some of them are called convenience customers. It is a fact that with a relatively small minimum monthly charge the customer may, by using the amount of gas allowed by the minimum charge, get service for which he does not fully pay. But on the other hand, the rates are made to apply to a class of consumers as a group and not to individual consumers. The characteristic features of the load caused by the class as a whole play the important part in determining the schedule of rates to be charged that class of consumers as compared to the schedule to be charged consumers of another class. There must necessarily be some discrimination between individual consumers within a given class but so long as the discrimination is not unfair or undue the rates may be taken as fair.

[14] It appears from the evidence the company considers that the present schedule of rates places a part of the burden of serving the small consumers upon its larger consumers. By its proposed schedule it would shift a part of that burden from the larger consumers. Such can be done without disturbing the total gross revenue, but care must be exercised to prevent the placing of an undue burden upon any class of consumers. Furthermore, to so shift the burden as proposed in this case, allows a lower rate for the service to the larger consumers and promotes the sale of gas to such customers. It also encourages the consumers to use more gas. We find no fault with the company in trying to promote its business but every class of consumer should bear its just share of carrying on the business, as well as its share of promoting the business. If the small customer is made to bear the cost of promoting a new class of customer or business, the going concern value later accruing in that new business should belong to small customers and not the company.

However, going back to the thought above that the small customer should not create such a burden as to cause unfair discrimination within the class, an analysis of the company's exhibits will show there should be some adjustment, though not so great as the company pictures. Sheet No. 6 of Exhibit No. 3 shows

the company now has an average of 196,593 meters, and we assume all customers are metered, through which an average hourly amount of gas equal to 24,406,973 cubic feet may be taken so far as services and meters are concerned. The size of meters vary from a so-called 5-light meter to a 200-light B meter. These have an hourly capacity of 94 cubic feet to 3,200 cubic feet. We understand each of the customers may take at any time the full amount of gas indicated by the meter, and more, but for general comparisons the size of the meter fairly indicates the service the customer may have. The 5-light meter appears to be the smallest set. The evidence shows there are many customers who would not demand the amount provided by a 5-light meter. However, the company contends that the limits of practical construction requires the installation of services that would if desired by the customer supply the gas that a 5-light meter would properly measure and that it is not practical to purchase a stock of smaller meters. This contention was not contradicted. That, therefore, means service must be run and meter set of sufficient size to serve a load as large as 94 cubic feet of gas per hour, whether the customer desires it or not. That size of installation will serve the ordinary domestic customer. The evidence shows that of 196,593 meters, 156,986 are 5-light meters and that there are 166,095 domestic customers. It is apparent the majority of the 5-light meters serve domestic customers.

[15] Now to get some idea of how the expenses should be allocated to each customer, the entire system owned and operated by the company may be in a general way separated into two parts. One part is that equipment used to produce the gas, the other that used to deliver it to the customer. Gas companies secure their gas supply from different sources. Some have the gas delivered to a certain point on its system at a certain price, as those companies who purchase natural gas from some pipe line company. Other companies manufacture all the gas needed at a plant of its own. The applicant company manufactures a part of its requirements, both as coal and water gas, and purchases its other requirements, some of which is gas low in heat value, and some of which is gas high in heat value. This gas is all taken by the company, treated and brought to a more or less uni-

form heat value before being released to the customer. All of the expenses of manufacturing, bringing together and treating, constitutes the production cost of the total amount of gas to be sent out by the company. Such gas is stored in holders to await the customer's call. The second major part of the system is equipment needed to take the gas from the holder to the consumer. The cost of that equipment should be divided among the customers as their class demand may require. If the customers were so grouped and located that one set of pipes could be extended from the holders to the domestic customers, another to industrial customers, and another to the house-heating customers the problem of allocating this part of the system to the various classes of consumers would be simple. In the absence of such an arrangement it becomes necessary to allocate the system to the various consumers on the basis of their respective demands.

[16] It is not possible to point out any particular part of the system and say that part is provided for a particular customer. When extending its mains to serve a new customer the company does not install a pipe just large enough to give that customer satisfactory service and enlarge the original pipe back to the holder sufficiently to carry the added load. The pipe installed is large enough to take care of all customers that may, in an estimated future time, receive gas through it. The size of the pipe is determined by the experience and judgment of the company's experts. Furthermore, the size of the pipe does not vary in direct proportion to the number of customers, their demands being equal or not. There is a diversity between customers in the use of the gas so as the number of customers increase the cost per customer of providing mains to serve them becomes less. The sum of the individual demands of the customers in any one class produces the total demand made by that class on the distribution system. With that information for each class the distribution system can be allocated to the various classes of consumers, and from that the part that each customer should bear. However, the class demands do not appear in evidence in this case, and the allocation of costs will be made on a basis that should produce fair results.

[17] As mentioned above, there is a minimum practical limit

below which the company cannot economically go in the installation of services and meters, that minimum service and meter being sufficient to serve a customer who would require 94 cubic feet of gas per hour. Therefore, taking the investment in services and meters, as shown by the company, and allocating the cost on the basis of the respective demands, the results are as follows, see sheet No. 3 of company's Exhibit No. 3.

Gas services	$5,556,217
Meters	3,112,708
Total	$8,668,925

[18] The maximum hourly demand, as shown on Sheet No. 6 of company's Exhibit No. 3, is 24,406,973 cubic feet, so that the investment in services and meters is 35.51 cents per cubic feet of demand. The minimum amount of investment then per service, based on a 94 cubic feet demand, is $33.38. Allowing 9 per cent for return and depreciation, the monthly charge per customer to cover services and meters is 25.03 cents. It may be that the cost per cubic foot of capacity of service is less for larger services, and it might appear that an excessive portion of the investment is being shifted to large customers, such as industrial and house-heating customers, but we cannot overlook the fact that St. Louis is an apartment city and that a large number of domestic customers in apartment houses and also in business houses are served by one service line. The basis of the allocation appears to be a fair average. The allocation of the investment in mains is somewhat different. Even though every customer may require the installation of a 5-light meter and service for practical purposes, the mains and trunk lines are not so installed. Many of the so-called domestic consumers may and do require as low as 20 cubic feet per hour as a maximum demand, so that the size of mains and trunk lines is not fixed by the sizes of meters and services but by the integral of all of the actual demands of the various consumers, the diversity of their demands having an important part in fixing the size of main required. The rates and charges should reflect such conditions. The company by its Sheet No. 3, Exhibit No. 3, shows that $14,189,615 is invested in trunk lines and mains. The Commission has deducted $560,000 for reduced value of mains, so allowing 9 per

cent for return and depreciation it appears from the evidence herein that the consumer whose demand is no greater than 20 cubic feet per hour, should pay as a fixed monthly charge the sum of 8.37 cents to bear such consumers' requirements in mains and trunk lines. The larger consumer should of course pay a larger amount. The company does not appear to desire to put in a service charge varying directly as the demand but to have a part of it spread over the gas used. This is especially true in the schedule proposed for the domestic class of consumers. The proposed schedules for the other classes reflects a demand plus consumption type of rate.

[19] In addition to the investment as allocated above to each consumer and the consequent fixed charges to be borne by such consumer, the company has certain operating expenses caused by each consumer regardless of whether gas is used or not. Some of these expenses are meter reading, billing, collecting, and consumers' complaints. On page No. 4 of company's Exhibit No. 3 the company shows a commercial expense of $407,869.02, which covers billing, meter reading, and collecting, and amount to about the same expense for each meter, regardless of size of meter and amount of gas used. Therefore, the commercial expense, as so understood, should be divided equally among all meters. Doing so produces a monthly cost per meter of 17.29 cents. Each customer's monthly bill should contain that amount whether gas is used or not.

[20] Summing up the above charges that appear may be justly charged direct to each consumer, we have a monthly charge of 25.03 cents plus 8.37 cents plus 17.29 cents, or a total of 50.69 cents that the smallest consumer should pay. The remaining expenses and allowances for depreciation and return may justly be spread over the gas sold. The total value of property, as found by the Commission is the sum of $47,000,000, of which $22,298,540 has been considered, leaving a remainder of $24,701,460. The yearly operating expenses, as determined by the Commission are $4,100,000, of which the sum of $407,869 has been considered. Allowing 9 per cent for return and depreciation on $24,701,460 plus the operating expenses reduced by $407,869, there is to be produced by the sale of gas the sum of

$5,915,262. This amount requires a charge of approximately 90 cents per thousand cubic feet of gas sold.

[21] The company requests authority to put into effect a minimum charge of 90 cents per month for which it will allow the use of 400 cubic feet of gas. The proposed charge does not appear to be fair. The company is seeking relief from the so-called convenience user and if allowed the above charge of 50.69 cents per month, it has been given that relief and the consumer should be given the privilege of using the gas as he may desire, and at least should not be taxed for not using the gas. The proposed minimum monthly charge, after taking out the 50.69 cent charge, will pay for about 440 cubic feet of gas at 90 cents per thousand cubic feet. The evidence shows there are 16,498 consumers who use 400 cubic feet or less of gas per month. Under the proposed schedule these consumers would be required to pay for service they do not need or take.

[22] The Commission is of the opinion a minimum charge per month which allows the consumer to take earlier advantage of a lower step in the rates is preferable to the so-called service charge. While the resulting revenue derived must be the same in either case, the Commission has found that a great many companies, and especially so with the larger ones, have found it a great task to explain and convince customers that a tangible service is being rendered to cover the service charge, and the result in many instances is unsatisfactory.

[23] It, therefore, appears fair that the company should be allowed to file for approval, a schedule of rates that will produce a return of 7½ per cent on a fair value of $47,000,000, reflecting or containing a minimum net charge per month of 75 cents for which 300 cubic feet of gas is given the domestic consumer, and a maximum charge of 95 cents per thousand cubic feet of gas consumed by any customer per month.

[24] The Commission, in fixing a maximum rate of 95 cents per thousand cubic feet of gas, considered the fact that a flat charge of 90 cents per thousand cubic feet for all gas sold would only produce the allowable revenue without any provision for a sliding scale of rates. Due to the difference in load factor and diversity factor of the various consumers, a schedule containing

a sliding scale of rates must be used to avoid discrimination between classes of consumers and between individual consumers. The charge of 95 cents per thousand cubic feet of gas will allow a block schedule with reductions as the amount of gas used becomes greater.

The company may submit for approval a schedule of rates applicable to all classes of consumers conforming to the findings herein above made and furnish at the same time data to show the gross revenue said schedule will produce, and that there will be no undue discrimination in the application of rates therein contained.

Ing, Chairman, Hutchison and Painter, Commissioners, concur; Porter, Commissioner, concurs in separate report; Calfee, Commissioner, dissents in separate report.

Porter, Commissioner, concurring: I concur in part in the results of this report for the following reasons:

Valuation: This Commission, in Case No. 1673, Aluminum Goods Mfg. Co. v. Laclede Gas Light Co. 16 Mo. P. S. C. R. 114, P.U.R.1927B, 1, determined the fair valuation of the gas property, as of October 1, 1925, used and useful in the public service, to be the sum of $45,600,000. I had no part in these proceedings as I had disqualified myself. However, this valuation was accepted formally both by the city of St. Louis and the company, and I am not prepared to challenge the correctness of the findings. In the present case all parties used this valuation as a basis for their computations.

The company challenges the right of the Commission to reconsider this valuation in the present case, basing its challenge upon the fact that it was not formally notified that the former valuation was to be reconsidered. In this, I believe, it is clearly wrong as any proceeding before this Commission which has for its object an increase of gross revenues for a utility must of necessity consider the valuation as of the date of the proceedings. A previous valuation is useful only in so far as the record shows that prices and conditions have not changed. "In determining the price to be charged for gas, electricity, or water the Commission may consider all facts which in its judgment have any

bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies." Section 10491, Revised Statutes of Missouri, 1919.

This record is silent as to changes in value in the last two years of a large proportion of the company's property. There is much testimony in regard to changes in value of the company's mains and in regard to the change in the value of the intangible item known as going value. There is also much contradictory testimony as to the number and value of items of property that have become nonused in the public service.

The Commission's report discusses fully the evidence as to decreases in value due to decrease in the costs of the mains and to property not now used and I am in accord with its findings. The going value of $5,818,000 was a part of the previous valuation of this property and as stated above said valuation was formally accepted by all parties. Mr. Bauer, the city's principal witness on going value, did not give much tangible evidence to support his contention that the going value should be reduced. In fact under cross-examination he replied as follows:

Commissioner Calfee: "Do you really think under your theory there has been a change in conditions in the last couple of years as affecting this case?"

Answer: "No, I could not say, if my view of what is going value and how it should be regarded were taken, *there has been no change,* nor would there have been any such valuation allowed as there was here for going value." (Italics my own.) Transcript p. 884.

Mr. Bauer further stated that "the courts and authorities have not given definite recognition to it (his conception of going value)." Transcript p. 883. I am of the opinion that upon this record the Commission could not do otherwise than adopt their previous findings as to going value.

Depreciation: I am not in full accord with the discussion in the report on depreciation. A public utility has an indefinite life.

It does not cease to exist at the end of any given period unless there should come a newer and improved method to render the same service. Many of the smaller units of the utility property are replaced at the end of their useful life in the ordinary course of maintenance and are charged to operating expenses. For this reason I am of the opinion that the depreciation reserve fund should be sufficiently large to replace the larger units as these wear out. In a large plant such as the Laclede Gas Light Company these replacements eventually become fairly uniform over a period of years. The Commission is not supposed to give the company a return for depreciation that will permit it to build up a large fund and I am of the opinion that the 1½ per cent allowed in the report is approximately correct.

I disagree with the Commission in applying this 1½ per cent to the investment cost. In valuing the property for rate-making purposes the Commission based its conclusion upon its present value and not upon its original cost, and in view of the long line of court decisions it could not do otherwise.

"But if it was essential to adopt that method for ascertaining the value of the property to which the rates were applied, it is not easy to see why it should not be adopted in estimating the amount needed to replace that property when it is worn out or becomes obsolete and worthless. If the company paid $100,000 for property now only worth $10,000, it would be grossly unfair to the public to base its annual depreciation on its cost, and if on the other hand, the company paid $10,000 for property now worth $100,000, it would be equally unfair to it to compel it to sell that property to the public at 10 per cent of its real value. These conclusions seem to be self-evident, and while there is authority to the contrary, they are supported by the reasoning in such cases as the Havre de Grace & P. Bridge Co. v. Public Service Commission, 132 Md. 16, P.U.R.1918D, 484, 103 Atl. 319; Knoxville v. Knoxville Water Co. 212 U. S. 1, 53 L. ed. 371, 29 Sup. Ct. Rep. 148, and Michigan Pub. Utilities Commission v. Michigan State Teleph. Co. 228 Mich. 658, P.U.R.1925C, 158, 200 N. W. 749, and from the standpoint of fair play both to the company and the public are inevitable. To require the company to sell its service at rates which made no provision at

all for the replacement or repair of the property when worn out or obsolete, would be plain confiscation, and to require it to sell it at rates which make an inadequate provision for the return of its value, when worn out or obsolete as a result of public service, can be no less.

"Counsel for the Commission suggests that to restore value would be to *'require the financing of additions to plant, to the extent of the excess of replacement over original cost of property replaced, by the public, which would in turn have to pay a return on the capital thus required.'* The meaning of that suggestion is not altogether clear, but if it is that the company is entitled to the return of anything less than the value of its property it cannot be sustained. Money deducted from earnings to replace equipment which has become worn out or obsolete, by other equipment of the same character and the same value, adds nothing to the company's resources but merely keeps them at the same level." (Italics my own.) West v. United R. & Electric Co. (Md. Ct. App.) P.U.R.1928D, 141, 172, 142 Atl. 870.

The company contends for a much higher return for depreciation and gives as an example of the need for same, the city of St. Louis' recent change from gas to electricity for street lighting. This is not depreciation. This is one of the hazards of the game which makes necessary in financing a seven to eight per cent return. If it were possible to guarantee that all property would pay a return and at the end of its useful life would either be replaced or paid for, then the Commission would be justified in authorizing a smaller return. The state, through the Commission, does not allow a return based on what the traffic will bear because of the monopolistic privileges granted, and it does not place the return at the low figures received for government securities because of hazards such as testified to in the present case.

Rate of Return: I concur in the discussion and in the rate of return found in the Commission's report.

Rates: I am in accord with the rate schedule found in the report. The old schedule discriminated against the good customer of the company and in favor of the "convenience user." Contrary to popular belief the "convenience user" is not found

as a rule among those of small income. He is found among those whose income and inclination permits them to eat away from home and who, having the same equipment as other customers, uses gas infrequently. The new rates are aimed to correct this situation and will undoubtedly distribute the cost of service more equitably. The maximum increase to any one customer will be 44 cents.

The proposed rates are slightly discriminatory in favor of the industrial user. In resubmitting their rate schedules the company can and should remove this discrimination.

Calfee, Commissioner, dissenting: I am not in accord with some of the findings and conclusions as set out in the report and order of the Commission in this case, particularly with reference to valuation and rate of return. I cannot agree to a valuation of $47,000,000 for the used and useful property of the Laclede Gas Light Company, as found in the Commission's report, and think that this figure should be materially reduced.

In determining the questions now before us, it is necessary to notice the proceedings of this Commission in another case concerning this same company, Case No. 1673, in Aluminum Goods Mfg. Co. v. Laclede Gas Light Co., submitted March 11, 1926, and decided by this Commission November 20, 1926, and which will be hereinafter referred to as the Valuation Case. Said case will be found reported in 16 Mo. P. S. C. R. 114, P.U.R. 1927B, 1. In that case the Commission found the fair value of the gas department property of the Laclede Gas Light Company, as of October 1, 1925, to be $45,600,000, including a going value of $5,818,000. Also, in that case we fixed the annual depreciation allowance at one per cent of the original cost of the depreciable property in the gas department, or $249,000 a year, 16 Mo. P. S. C. R. l. c. 197.

In the present case the company is now before the Commission asking, among other things, for an increased annual depreciation allowance. It will be seen that the company has sought to obtain the relief to which it thinks it is entitled by two different proceedings. In the Valuation Case, above referred to, it stressed valuation and there was not much controversy

about the annual depreciation allowance. In the present proceeding it seeks to retain the benefits of the findings in the Valuation Case as to value but to have the Commission increase the allowance to it to cover annual depreciation. There is nothing improper in this method of proceeding, in and of itself, and correct results would probably be reached in the present case if the company proceeded upon the same theory, and its evidence was along the same general line as in the preceding case, and here arises the difficulty.

In the Valuation Case the company offered much evidence tending to show that there was very little accrued depreciation in its property, that its various units of property were well maintained and long lived (with reference to the distribution system there was some evidence offered by the company tending to show that the life of its mains would be almost unlimited), and that, taking their property as a whole, there was a very small rate of depreciation from year to year. The effect of this testimony was, of course, to show a very high per cent condition and to greatly lessen the amount of accrued depreciation, thereby securing for the company the highest possible valuation of its property. It is true that the Commission did not adopt the theories of depreciation urged by witnesses for the company, but it is also true that the Commission considered this evidence and gave it material weight in arriving at the amount of accrued depreciation in the property in the Valuation Case.

In the present case it seems clear to me that the company is proceeding upon a different theory and has offered evidence tending to show conditions quite different from those shown by its evidence in the former case. It now offers evidence tending to show that the lives of its various units of property are not so long, that there is a considerable degree of depreciation accruing in its property from year to year, and some of its testimony in this case might be taken to indicate an approaching obsolescence, in the near future, of a considerable part of its property. All this evidence was, of course, offered by the company for the purpose of showing that it should have an increased annual depreciation allowance. The report of the Commission finds that this allowance should be increased from 1 per cent to 1½ per cent per

annum and with this finding I agree. But in the light of the evidence now offered by the company itself, I am convinced that the finding of the Commission in the Valuation Case as to the value of the gas property should likewise be modified, that the amount of accrued depreciation in the gas property should be increased, thereby diminishing the fair value of the property.

It seems clear to me that there is an obvious relation between, and interdependence of, accrued depreciation and the annual depreciation allowance. Crudely expressed and reduced to its simplest elements, the idea might be illustrated as follows: A unit of property twenty years old, which had depreciated at the rate of 1½ per cent per annum, would have a greater per cent of accrued depreciation and a smaller value than it would have if it had depreciated at the rate of only 1 per cent per annum. Furthermore, accrued depreciation and the annual depreciation allowance should be determined on the same theory and with some reference to the relationship which undoubtedly exists between them.

"It seems entirely contrary to equity and sound reason that a different definition should be applied in the determination of the amount of accrued depreciation existing in a property and in the determination of the amount of depreciation currently accruing in the same property." Whitten's Valuation of Public Service Corporations (Revised Edition by Wilcox), Vol. 2, Paragraph 858, Page 1872.

I have not had the time at my disposal to make any accurate computation as to the exact amount which should be deducted from the valuation found by the Commission in the former case on account of the reasons hereinabove set out. It might be very difficult so to do but the difficulty of so doing ought not to preclude the Commission from giving this phase of the case due consideration. It may be that at this time we could only fix a tentative valuation, leaving a final determination to be made at some future time when it is practicable. In any event, in the light of the evidence in the case now before us, I am satisfied that the finding on valuation in the former case should be modified in accordance with the views herein expressed. This decrease in

valuation should be in addition to the amounts deducted on account of property not in use and decrease in the value of mains.

I am also of the opinion, in view of the evidence in this case, that the amount included in the valuation for going value should be reduced to a figure not exceeding 10 per cent of the value of the company's physical property.

I also disagree with the finding contained in the report of the Commission as to the rate of return to which the company is entitled. I am willing to say that if the company, at reasonable rates and at rates which are economically possible, can earn a return of 7½ per cent upon the fair present value of its property, such return is not excessive and the company should be permitted to earn it. But I am not willing to say that this Commission must, and should, fix a schedule of rates which will (theoretically at least), regardless of any other factor, give the company a 7½ per cent return upon the value of its property.

In this connection I quote from the report of this Commission in the valuation case, 16 Mo. P. S. C. R. l.c. 196, P.U.R. 1927B, at p. 41.

"Mr. Munroe, on cross-examination admitted that it would not be economically possible to earn an 8 per cent return on the company's estimate of the reproduction cost of the property.

"Mr. Harrop showed that an 8 per cent return on the valuation of the gas department property, claimed by the company would result in a 30 per cent increase in gas rates and would require a rate 19 per cent in excess of the rate voluntarily established by the St. Louis County Gas Company in St. Louis county."

It might not be economically possible for the company to earn a 7½ per cent rate of return upon the value of its property, and if so, this Commission should not assume the burden of fixing a schedule of rates which, theoretically at least, will enable it to do so. Neither courts nor Commissions can stop the operation of economic laws.

P.U.R.1929A.

CALIFORNIA RAILROAD COMMISSION.

RE DE LUXE WATER TAXI ASSOCIATION.

[Application No. 14772.]

RE H-10 WATER TAXI COMPANY.

[Application No. 14814.]

[Decision No. 20500.]

Vessels — High seas and inland waters.

1. A line three miles from shore was held not to be recognized by the courts as distinguishing high seas from inland waters, the former being defined as that portion of the sea which washes upon the coast and the latter as waters within the body of the country, p. 602.

Certificates — Commission jurisdiction — Inland waters.

2. Proposed passenger operations over water between points on the coast and the anchoring grounds of the United States fleet, not being exclusively between points within a harbor line or other line drawn by any authority having jurisdiction so to do, setting out the boundaries between the high seas and inland waters of the ports involved, are not within the jurisdiction of the Commission so far as a certificate is concerned, p. 602.

[November 16, 1928.]

APPLICATION of the operator of certain vessels for certificates of convenience and necessity; dismissed for lack of jurisdiction.

Appearances: N. M. Todd, for De Luxe Water Taxi Association; John W. Carrigan, for H-10 Water Taxi Company; S. C. Hall, for San Pedro Transportation Company, protestant; Charles A. Bland, for Long Beach Chamber of Commerce and Long Beach Harbor Commission; John K. Hall, for the city of Long Beach.

By the **Commission:** These applicants request the Commission to grant them certificates of public convenience and necessity to operate vessels for the transportation of passengers between the Fifth street ferry landing at San Pedro harbor and the Pine avenue pier at Long Beach by way of "Battleship Row," the designation given to the customary anchoring ground of the United States fleet when in those waters.

The applicants state that they will operate vessels on the in-

land waters of the state of California, and they assume that a certificate from this Commission for such operation is required under the provisions of § 50 (*d*) of the Public Utilities Act. The material part of that section reads as follows:

"(*d*) No corporation or person . . . shall hereafter begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points exclusively on the inland waters of this state, without first having obtained from the Railroad Commission a certificate. . . .

To discover the intent of the legislature in enacting § 50 (*d*) and the meaning of the words "inland waters" we may look at other sections of the Public Utilities Act. In § 2 (1) it is provided that inland waters, as used in that section "includes all navigable waters within the state of California other than the high seas." That provision merely differentiates such waters from "high seas," so we are compelled then to look to the decisions of the courts to ascertain the meaning of both terms. Before doing so, we will consider further the language of § 2 (1), of the Public Utilities Act, which, in its definition of common carriers, includes certain water transportation companies. Quoting that section:

"The term 'common carrier' when used in this act, includes . . . every corporation or person . . . operating or managing any vessel engaged in the transportation of persons or property for compensation between points upon the inland waters of this state, or regularly engaged in the transportation of persons or property for compensation upon the high seas on regular routes between points in this state."

The legislature seems here to have had in mind two types of water carriers, both of which are made common carriers; first: those operating "between points on the inland waters of this state," and second: those operating "upon the high seas on regular routes between points in this state." It should be noted that subsection (*d*) of § 50, requiring certification of those carriers operating "between points exclusively on the inland waters of this state," was enacted subsequent to that portion of § 1 above quoted. It is apparent that the legislature deemed it necessary to require the certification of only the first class of water

carriers mentioned in § 2, namely those operating between points upon the inland waters, as distinguished from those operating on the high seas. It should be noted, too, that in § 50 the word "exclusively" is added to the phraseology of § 2.

It is proper to inquire what reasonable distinction the legislature may have had in mind when differentiating between the two classes of water carriers. In the Wilmington Transportation Company cases (166 Cal. 741, 137 Pac. 1153 and 236 U. S. 151, 59 L. ed. 508, 35 Sup. Ct. Rep. 276), it was held that a state may regulate the rates by the transportation of passengers and property wholly by water between two ports in the same state, even over a course which traverses the high seas. Water transportation of that class, usually termed a coastwise operation, is undoubtedly what the legislature had in mind when referring to the operation of vessels "upon the high seas on regular routes between points in this state." It did not see fit, when subsequently it enacted subsection (*d*) of § 50, to require a certificate from such carriers.

[**1, 2**] It is clear that the class of water carriers which the legislature proposed to certificate was a class distinct from those engaged in a coastwise operation on the high seas. The proposed operations of these two applicants are between two distinct ports of this state and upon the high seas, unless the the term "high seas" should be held to mean those waters only which are beyond the outermost point to which the vessels of applicants navigate. The actual position at which the fleet now anchors is roughly from one to three miles from shore, but this position is subject to change at any time by the Navy Department. Applicants state merely that the fleet is a point which they will serve, but do not limit their operations to any given distance from shore.

The question presented, then, is whether the legislature intended, in enacting subsection (*d*) of § 50 of Public Utilities Act, to require the certification of those water carriers which operate between points in this state when traversing the open ocean within a line drawn three miles or at any other certain distance from shore, and not to require the certification of those which go beyond that certain limit. We believe that the legislature did not

intend to make such a distinction, and that it must have had in mind an entirely different class of carriers when in § 50 it referred to those operating "between points exclusively on the inland waters of this state."

The Constitution of the state of California (Article XXI) provides that the territorial boundaries of this state shall extend three English miles from shore line. However, we do not believe that the territorial boundaries of the state are determinative of the question here involved. From what we have said above, it seems clear that the legislature must have intended some other line to mark the distinction between "inland waters" and the "high seas." If the term "inland waters" was intended to include those waters only which have been recognized by the admiralty courts as such, which are the canals, lakes, streams, rivers, water courses, inlets, bays and arms of the sea between projections of land or other aids to navigation, there would have been a reasonable ground for requiring that vessels operating exclusively in such waters obtain a certificate while not imposing the same burden upon those engaged in coastwise trade. The courts have never recognized a line three miles from shore as distinguishing "high seas" from "inland waters." The high sea has been generally defined as that portion of the sea which washes the open coast. Inland waters, on the other hand, are those within the body of the country. (1 Corpus Juris, 1255, § 32, Kaiser Wilhelm Der Grosse, 175 Fed. 215.)

The services proposed by both applicants are not exclusively between points within a harbor line or other line which has been drawn by any authority having jurisdiction so to do setting out the boundaries between the high seas and the inland waters of the ports of Los Angeles and Long Beach. We must conclude that the transportation services proposed by the two applicants, not being between points exclusively on the inland waters of this state, do not come within the jurisdiction of this Commission in so far as certification is required under § 50 (*d*) of the Public Utilities Act.

ILLINOIS COMMERCE COMMISSION.

RE ILLINOIS POWER & LIGHT CORPORATION.

[No. 18478 (Sub. 6).]

Discrimination — Electric and steam-heating service — Change in operating method.

A utility in fixing rates for steam-heating service formerly rendered more economically through the use of exhaust steam from local electric generation is not justified nor will it be permitted where, owing to the substituted use of transmitted current, it is necessary to make steam specifically for heating purposes at a greater expense, to impose on electric consumers as a group any part of such additional expense.

[November 21, 1928.]

APPLICATION for increased rates for steam-heating service; granted.

By the **Commission**: The Illinois Power & Light Corporation filed in due form new schedules of rates for steam-heating service in Decatur, Clinton, Danville, Bloomington, Champaign, Urbana, and Monmouth, Illinois and for hot water service in Mt. Vernon, Illinois. The rates thus proposed to be made effective were found to constitute an increase over the rates now in effect and the Commission, therefore, issued a suspension order postponing the effective date of each and all of said schedules, pending a hearing and investigation as to the reasonableness of such new rates. All of these schedules were docketed as Case No. 18478; they were consolidated for the purpose of hearing but will be disposed of by separate order.

Due notice of the filing of such schedules was given to each and all of the cities involved and the matter was set for hearing before the Commission at its office in Springfield on August 3, 1928, and subsequent hearings were held on October 16, 1928, and on November 20, 1928. At the first hearing the following appearances were entered:

Schuyler, Weinfeld & Parker by H. E. Wood and George W. Lennon for the petitioner, the Illinois Power & Light Corporation.

Maurice De Witt on behalf of the city of Mt. Vernon, Illinois.

On behalf of the petitioner evidence was introduced tending

to justify and to support the reasonableness of the proposed rates. An inventory of the heating property of the Illinois Power & Light Corporation in the city of Mt. Vernon was made by Day and Zimmerman, Inc., a well known and competent engineering organization, and an exhibit embodying the inventory of this property and a valuation showing the estimated cost of reproduction thereof new, less depreciation, and including also an estimate of the amount of working capital required for this property was duly submitted and introduced in evidence.

The petitioner also presented an exhibit marked and introduced as Exhibit "E," showing the present and proposed rates for heating service; detailed statistics showing the present and estimated operating expenses and earnings of the hot water heating system under the present and the proposed rates.

Full opportunity was given to attorneys representing the city to examine and to check the exhibits so submitted and to cross-examine the witnesses of the petitioner. No evidence was introduced on behalf of the city, nor was appearance entered for any other objector.

[1] The evidence shows that this hot water heating property was originally constructed and was designed to be operated in connection with the electric generating plant and equipment at Mt. Vernon. In the early years of the electric industry it was common practice and indeed necessary to generate locally all of the electrical energy required in and about the municipality. Small electric plants were thus built in each city consisting of boiler plants and noncondensing engine equipment for the operation of generators. In the operation of this character of engine equipment large quantities of exhaust steam were discharged into the atmosphere, and heating systems, extending usually from the plant to and around the business district in each city, were constructed for the purpose of utilizing this steam which otherwise would go to waste. In this case as in case of all other heating systems involved in this proceeding the heating system does not cover more than a small part of the total area of the city and the heating service has been and is available for relatively few of the total number of residents of the city.

The Illinois Power & Light Corporation by the construction

of transmission lines has now been enabled to procure from large and efficient centrally located power stations a supply of electrical energy adequate to meet the needs of its electric service in Mt. Vernon as well as in all of the other communities here in question. In Mt. Vernon, the electric generating plant is not now operated and the heating plant is operated as an independent operation entirely apart from the electric utility.

The principle is well established that each utility service in a community shall, so far as possible, pay its own way and the utility company in the determination of its electric and heating rates is not justified nor will it be permitted to impose on the electric consumers as a group any part of the burden of expense of maintaining and operating the heating system.

The Commission has caused the exhibits embodying the inventory and valuation of the heating property at Mt. Vernon to be checked by its engineers, and the statistical and operating data submitted by the petitioner to be checked by its auditors. It will not be necessary that the Commission make a final and definite finding of value for the heating property, in view of the fact that the earnings under the proposed rates do not appear to afford a full measure of return. The Commission has not, therefore, required its own engineering department, to make up a new and independent inventory and valuation.

From the evidence submitted the Commission finds:

That the present fair value of the property of petitioner used and useful for hot water service and including the cost of physical property with a reasonable allowance for overhead cost, working capital, and going value is not less than $114,594; that the expense of operating the said hot water service for the year 1928 will be approximately $16,535; that the gross revenue under the present rates will be approximately $11,000 and under the proposed rates for the year 1928 will be approximately $17,240; that the net earnings available for depreciation and return under the proposed rates will be approximately $1,705, an amount substantially less than the amount required to meet the depreciation upon the property and leaving nothing for interest and return upon the company's investment.

Note.—A similar disposition was made in the application of this

same company for increased rates for steam-heating service in the following cases: Re Illinois Power & Light Corp. (Ill.) No. 18478 (Sub. 2); Re Illinois Power & Light Corp. (Ill.) No. 18478 (Sub. 3); Re Illinois Power & Light Corp. (Ill.) No. 18478 (Sub. 4); Re Illinois Power & Light Corp. (Ill.) No. 18478 (Sub. 5), Nov. 21, 1928.

CALIFORNIA RAILROAD COMMISSION.

RE FAY WATER COMPANY.

[Decision No. 20344, Application No. 15093.]

Security issues — Renewal of notes — Authorization.

While a utility may issue its notes payable not more than twelve months after the dates of issue without securing authorization, it can not renew such notes if the combined terms of the original notes and the renewal notes exceed the period of twelve months, or if the renewal notes are issued more than twelve months after the date of issue of the original notes.

[October 18, 1928.]

APPLICATION of a water company for authority to issue securities; granted.

Appearance: A. E. Campbell, for applicant.

By the **Commission**: In this application Fay Water Company asks the Commission to make an order approving certain construction work done by it, and the cost thereof, and the issue of certain notes, and authorizing it to issue two renewal notes in the aggregate amount of $8,000.

Fay Water Company is a corporation engaged in the business of supplying water for domestic and other purposes in and about the town of Avila, San Luis Obispo county. In 1927 the company reported total revenues at $7,919.90 and operating expenses at $6,475.88, leaving a balance of $1,444.02. For the eight months ending August 31, 1928, it reports revenues of $3,309.72 and operating expenses at $1,773.41, leaving a balance of $1,536.31. Its assets and liabilities, as of September 1, 1928, are reported as follows:

Assets.

Fixed capital	$96,027.00
Cash	202.72
Accounts receivable	491.00
Total assets	$96,720.72

Liabilities.

Capital stock	$72,00.00
Notes payable	8,000.00
Accounts payable	1,250.00
Reserve for depreciation	9,512.50
Surplus	5,958.22
Total liabilities	$96,720.72

The Commission, heretofore, has had occasion to inquire into the value of applicant's properties and into its operating conditions. By Decision No. 17339, dated September 14, 1926 (anno.) P.U.R.1927C, 254, it found as a reasonable rate base for the operative properties the sum of $60,000, after excluding nonoperative lands amounting to $40,000.

Against the company's properties, both operative and non-operative, are two short term unsecured 7-per cent notes; one for $5,000 in favor of Luigi Marre Land & Cattle Company, is dated September 1, 1927, and is payable one year after date of issue; and the other, for $3,000 in favor of Los Angeles First National Trust & Savings Bank, at San Luis Obispo, is dated June 12, 1928, and is payable six months after date of issue.

In connection with the issue of these notes it is reported that in the year 1921 the company had an insufficient supply of water, caused by the drying up of its wells, and was compelled to drill five new wells, to erect a new pump house, to buy new pumps and to lay additional pipe, all at a total cost of $10,632.20, which it financed, in part, through the issue of a $5,000 note to Luigi Marre Land & Cattle Company and a $3,500 note to the Commercial Bank of San Luis Obispo. The latter note was paid but the indebtedness in favor of Luigi Marre Land & Cattle Company has not been discharged.

Thereafter, in 1924, applicant found it necessary, due to a further shortage of water, to drill an additional well, to erect a pump house, to purchase a pump and motor and to lay a pipe line from the well to its tanks, all at a total cost of $5,010.58,

which it financed in part through the issue of a short-term note for $4,000 to Pacific-Southwest Trust & Savings Bank, now the Los Angeles First National Trust & Savings Bank. Of this amount $1,000 has since been paid, leaving $3,000 owing at this time.

The notes originally issued in 1921 and 1924 to pay for this construction work were made payable at periods not exceeding twelve months after date of issue and since have been renewed. While it is true a utility may issue its notes payable not more than twelve months after the dates of issue without obtaining the consent of this Commission, it can not renew such notes if the combined terms of the original notes and the renewal notes exceed the period of twelve months or if the renewal notes are issued more than twelve months after date of issue of the original notes. Here, applicant reports that it has renewed the two notes from time to time and it appears to us that such renewals should have been first authorized by this Commission. However, it clearly appears that applicant renewed its notes without authority from this Commission, through inadvertence and with no intent to evade the provisions of the Public Utilities Act or the rules of the Commission. When the matter was called to the company's attention it filed this application for approval of the original notes and for authority to issue new ones.

The Commission can not at this time enter an order approving the issue of the two original notes, as requested, nor does it seem necessary for it to make its order approving the original construction work done by applicant and the cost thereof. The order herein, accordingly, will be limited to authorizing the issue of new notes in lieu of those the company attempted to issue without first obtaining the consent of the Commission, and the renewal of such notes.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

MARCUS FORSBERG

v.

PLAINFIELD UNION WATER COMPANY.

Payment — Deposits to secure payment.

1. Under the Board's rules a public utility may require a customer to deposit with it a sum of money reasonable in amount to guarantee payment of bills, pending the establishment by him of his credit with the company, p. 612.

Payment — Deposits to secure payment — Overdue bills.

2. A company retaining a deposit against a certain customer pending the establishment by him of his credit is not required to charge bills against such deposit until it is exhausted, and it may insist that when an overdue bill is charged against the deposit, payment be made to restore it to the original amount, p. 612.

Service — Discontinuance — Improper action of consumer.

3. The action of a water consumer in turning on service at his curb, which has been disconnceted for nonpayment, is in violation of a statute forbidding anyone without permission to interfere in any way with meters, pipes, or other connections of a water company, p. 612.

Payment — Establishment of credit.

4. A consumer required to make a deposit for the securing of future payments may, by prompt payment within time limits during the succeeding two years, establish his credit with the company and then be entitled to a return of his deposit with interest, p. 612.

Payment — Discontinuance to enforce — Connection and disconnection charges.

5. Expense of connection and disconnection of service should not generally be borne by customers as a whole, but only by those who actually call for such service on the part of the company, which is justified in making such charge where service has been disconnected for nonpayment of bills, p. 612.

[December 13, 1928.]

COMPLAINT by a water consumer against disconnection of service; complaint dismissed.

Appearances: Marcus Forsberg for the complainant; F. L. Winslow for the company.

By the **Board**: This matter comes before the Board on complaint of Marcus Forsberg who stated that water service had been discontinued by the Plainfield Union Water Company for failure

to maintain a deposit of $10 with the company to guarantee payment of bills.

It appears from the testimony that Mr. Forsberg was a customer of the company at the present address, 1130 West Seventh street, Plainfield, from 1920 to 1926. During this period, being the owner of the property, he had no deposit with the company to guarantee payment of bills. In the fall of 1926 Mr. Forsberg tore down the house in which he was living and built a new one which was completed sometime in the Spring in 1927. On applying for service for the new house, the company requested a deposit of $10 to guarantee payment of bills claiming that Mr. Forsberg had been delinquent in the payment of previous bills, delaying some of them for considerable periods of time beyond those ordinarily allowed. In one case paying for three-quarters of the year at one time. The company also claimed that when the first bill sent out for service in the new house, the bill being for $11.97, Mr. Forsberg deducted the amount of the deposit $10 plus 45 cents interest sending the company a check for $1.52. This check was returned to Mr. Forsberg by the company with request for payment in full. A letter being sent by the company reading as follows:

"We herewith return bill for balance still open together with your check for $1.52. We would thank you to kindly remit your check for $11.97 as this is now long overdue."

The same thing happened on each later occasion. The company, therefore, later informed Mr. Forsberg that deposits were returnable only at the discretion of the company stating further that in this case his deposit was not returnable as the account was long overdue and it was because of such delinquency that such deposits were required. Again on October 2, 1928, the company wrote to Mr. Forsberg along similar lines but stated that no attention was paid to any of these letters by Mr. Forsberg.

As a result of this condition a 7-day notice (the term of seven days being required by the Board's rules) was sent to Mr. Forsberg stating that if payment was not received promptly service would be discontinued. In accordance with this notice service was duly discontinued, but was turned on by Mr. Forsberg. The company then again disconnected it and Mr. Forsberg, on four

occasions on the same day, turned on the water at the curb. The company then sent a man to dig up the curb box itself but Mrs. Forsberg prevented this action on the part of the company by standing over the box. The company then cut the concrete pavement and discontinued the service at the water main. It was at this point in the controversy that Mr. Forsberg complained to the Board.

[1–3] The matter was duly heard on December 6th and facts established as stated above. While there had been a number of complaints made regarding the arbitrary actions of the water company, the facts in this particular case indicate that Mr. Forsberg was delinquent on a number of occasions and as a result he was asked to pay the deposit to guarantee payment of bills. Under the Board's rules, a public utility may require a customer to deposit with it a sum of money reasonable in amount to guarantee payment of bills pending the establishment by him of his credit with the company. The company is not required to charge bills against the deposit until it is exhausted. It may insist that when an overdue bill is charged against the deposit payment be made to restore it to the original amount. The record regarding the delay in payments indicates that the company acted properly in asking for a deposit. A complaint concerning this action of the company should have been made to the Board at that time. On the other hand, Mr. Forsberg's action in turning on the water at the curb is in violation of a statute of this state enacted April 8, 1903 which forbids anyone without permission to connect or disconnect or in anyway interfere or tamper with meters, pipes, conduits, or other connection of the water company.

[4, 5] Prompt payments of monthly or quarterly bills is essential in order to keep down the operating costs of a utility company. Reasonable rules are necessary in order to protect the interests of the customers generally as well as that of the company. The Board in its rules provides that service may be discontinued for certain definite reasons but that before doing so, a company must send to the customer written notice to the effect that if payment is not received within seven days from the date of the notice, that service would be discontinued. It would appear that such notice had been given and that they had been for a period

greater than seven days. The Board's conclusion is that the bill should be paid in full and that the company may retain the deposit. On the other hand, Mr. Forsberg by prompt payment within the time limits during the next two years, may establish his credit with the company and by such establishment will then be entitled to the return of his deposit with interest. Expense of connection and disconnection service should not generally be borne by customers as a whole but should be borne by those who actually call for such service on the part of the company. Reasonable charges for connection and disconnection are essential, if such expense is not to be borne by customers as a whole. Therefore the company is justified in addition to the charge for service, to collect a reasonable charge of cost of re-establishing the service in question.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

J. J. KINTNER

v.

JOHNSTOWN TELEPHONE COMPANY.

[Complaint Docket No. 7200.]

Payment — Long distance security deposits — Telephones.

The action of a telephone company requiring a subscriber, with whom it has had a dispute over a long distance bill, to deposit more than the amount in question as security for payment of future bills, and in requiring his daughter, who then applied for service, to deposit more than twice that amount as a condition to service, was held an unreasonable application of a rule permitting the company to ask a deposit to cover "probable toll usage" as security for payment "where an applicant's credit is not established."

[December 11, 1928.]

COMPLAINT by telephone subscriber against certain practices of a telephone company; complaint sustained.

By the **Commission**: This complaint alleges in substance that the practice of respondent, in determining the amount of advance deposit required from persons whose credit is not established before telephone service will be furnished, is arbitrary and unreasonable.

J. J. Kintner, complainant, is a resident of Westmont, a municipality adjoining the city of Johnstown. Prior to September 21, 1926, he was a subscriber of the Johnstown Telephone Company, respondent.

It appears that complainant received from respondent a bill for telephone service to the total amount of $31.20, of which amount $19.30 was for long distance service and the balance for monthly local service rentals. A dispute arose concerning the propriety of some $13 of the $19.30 long distance charges, which dispute was terminated by respondent disconnecting complainant's service for nonpayment.

An employee of respondent telephoned complainant's residence on each of the three days immediately prior to the disconnection of complainant's service for the purpose of notifying complainant that his service would be discontinued if the delinquent bill remained unpaid. At the time of these calls complainant was not in his residence. No endeavor was made to communicate with complainant at his Johnstown office.

Complainant's daughter, dwelling in premises adjacent to that of complainant, then requested respondent to furnish telephone service to her. Respondent having ascertained that she was the substantial user of the long distance calls in dispute, refused to establish her service until she made an advance deposit of $40.

Subsequently, complainant tendered respondent the unpaid portion of his bill in order that his service might be re-established, but respondent refused to again connect complainant to its system until he had first deposited an advance amount of $20 with the company in order to assure prompt payment of future bills.

Respondent based its practice on Provision No. 14 of the rules and regulations of its tariffs, which rule reads:

"Where an applicant's credit is not established, a deposit to cover his probable toll usage is required as security for payment of future bills for service. Interest at 6 per cent per annum is paid to subscribers for period deposit is retained."

Respondent's general manager testified that the amount of an advance deposit is determined by considering the amount of both local rentals and long distance charges.

The Commission is convinced that respondent has administered this rule in an unreasonable manner and is also exceeding its plain language. With the same long distance charges of $19.30 as a guide, which amount was substantially incurred by one person only—complainant's daughter—respondent has determined that complainant should deposit $20 in advance, and his daughter $40 in advance, in order that their services might be connected.

The evidence is not persuasive that respondent, prior to its disconnection of complainant's service, had exhausted all normally available means of obtaining an adjustment of the differences between it and its patron. The character of the testimony bearing on respondent's three calls to complainant's residence makes it appear highly probable that respondent did not seriously contemplate being able thereby to interview complainant personally. These calls appear as a perfunctory gesture, rather than as a bona fide attempt to obtain satisfaction of an outstanding bill. Under the circumstances of this particular case, before disconnecting complainant's service, respondent should first have communicated with complainant himself. Respondent's attitude, as disclosed by a consideration of the facts of record, is not, in the opinion of the Commission, such as a public service company would normally exhibit in endeavoring in good faith to maintain friendly relations with its patrons.

From the evidence presented, the Commission finds that the advance deposits requested by respondent are unreasonable. If either complainant or his daughter alone subscribe for service, respondent may reasonably require a deposit not exceeding $20. If both complainant and his daughter subscribe individually to separate telephones, respondent may reasonably require a deposit not exceeding $20 from each.

Moreover, respondent, in determining the amount of its advance deposits by considering the amount of both local and long distance charges, is not conforming to its rule as quoted above. An order will issue sustaining the complaint and directing respondent to discontinue any practices which exceed the provisions of its Rule No. 14, and to establish its services upon the terms above indicated.

ARIZONA CORPORATION COMMISSION.

RE L. C. RICHARDSON et al.

[Docket No. 3358-R-315, Decision No. 4655.]

Service — Discontinuance — Telegraph — Mining camp.

1. The probability of a revived activity in gold mining districts was held not sufficient to justify the granting of a petition for improved telegraph facilities, where actual conditions did not warrant the improvement, p. 617.

Service — Telegrams — Secrecy — Telephoned messages.

2. The protection which the statutes throw about the telegraph business regarding the secrecy of messages was held not to be weakened by the fact that, in some instances, the business might be handled by an employee of an assisting telephone company, in view of the fact that the law places the seal of secrecy upon the telephone operators to the same extent as upon telegraph operators, p. 618.

Service — Telegrams — Day letters.

3. A period of less than three hours in the handling of a day letter from the time it was filed until its receipt was held not to be unreasonable in view of the reduced rates for such deferred service, p. 618.

Service — Telegraph — Misspelling — Inexperienced employee.

4. Errors occurring in the transmission of telegrams, explained by the necessary temporary service of an inexperienced employee, were held not to denote inadequate service where misspellings were not of a character to render words meaningless to the addressee, p. 618.

Service — Commission powers — Abandonment — Operation at a loss.

5. It is not within the power of the Commission to require the continuation of service by a public utility at an actual loss, p. 618.

[December 26, 1928.]

PETITION of a group of citizens for improved telegraph service; denied.

Appearances: E. C. Vanderbilt and Kibbey, Bennett, Gust, Smith and Lyman for respondents.

Betts, Commissioner: The complaint herein filed on June 18, 1928 by L. C. Richardson and sixty-three other citizens of Oatman, alleged that the service being accorded the people of that community by the Western Union Telegraph Company was insufficient and unsatisfactory, and prayed for an order of the Commission requiring additional and improved service.

There were no appearances on behalf of complainants.

Oatman is a small mining town located in the northwestern

portion of Mohave county. Its nearest railroad point is Kingman, the county seat of that county.

About 1915 there were several gold discoveries of considerable importance in the Oatman district, and the town grew rapidly until at its peak there were two or three thousand population. Responsive to the demands which followed industrial expansion and increased population, the Western Union Telegraph Company established an exclusive office giving direct service to the outside world.

[1] It is a matter of history that gold camps as a rule do not experience long lives. Oatman was not an exception to this rule. The two principal mines of the district began to exhaust their ore reserves several years ago and at the present time are almost inactive. Individuals and companies are carrying on development work and it is entirely possible, indeed probable, that other mines of great value will be opened and that the district may experience new life and renewed activities. In the proceedings before us we must however, deal with present-day conditions.

Although there was a decided slump in business in 1917 and 1918, the company leased quarters and a special wire from the local telephone company and continued its Oatman service.

The records show that in 1925 the revenue amounted to $242 per month and the expenses $202 per month. In 1926, the revenues were $255 per month, and the expenses $183 per month. In 1927, the revenues were $242 per month and the expenses $211 per month. The average over these three years was $246 per month revenue and $211 per month expenses, a ratio of 81 per cent which did not include Oatman proportion of incidental and other items which it is alleged would, had they been included resulted in an actual deficit. By the end of this period the business had fallen off to such an extent that it did not require the services of an employee more than one-fourth of the time. It is obvious that the company could not continue operations on a basis which would involve actual loss. To prevent this condition and at the same time to enable them to continue to afford service, arrangements were made with the local telephone company to have the manager of the latter company act as the joint agent of the two companies. This arrangement did not involve changes

in rates, hours, or classes of service and indeed there was no difference whatever except that the messages were thereafter to be handled by telephone between Kingman and Oatman.

On December 5, 1927, the building occupied by the joint office of the telegraph and telephone company was destroyed by fire, resulting in the total loss of all of the respondent companies' furniture, fixtures, equipment, and apparatus. The Western Union, as lessee, followed the telephone company to new quarters where the business was continued as before.

[2] The gravaman of the complainant here seems to be that the handling of Western Union telegrams by telephone does not afford that measure of secrecy or accuracy to which the public is entitled. It is however, a matter of general information that telegrams are handled in this way in many of the large hotels of the cities and in some instances by cities of considerable size, for example, as was mentioned in the hearing, the city of Pasadena. The law places a seal of secrecy upon the telephone operator to the same extent and in the same manner as it does upon the telegraph operator, hence it does not appear that the protection which the statutes throw around the business is weakened by the fact that the business is handled by an employee of the telephone company, and we are of the opinion that experience will demonstrate that the complainants have not been prejudiced. Indeed the absence of appearances on behalf of complainants at the time that the hearing was called, indicates that this has already been demonstrated.

[3–5] It appears that the complaint herein was based almost wholly upon the handling of a telegram forwarded from Los Angeles on April 9, 1928, addressed to one of the complainants. This message was filed at Los Angeles as a day letter, at 12:55 P. M., and was received at Oatman at 3:30 P. M. Since day letters are handled at rates considerably below those applicable to straight-day telegrams and are by the terms of the company's tariffs specifically subjected to reasonable delays in transmission, it is not apparent that the time consumed in this transaction involved unreasonable and unjustifiable delay. An answer was requested which was not transmitted by the addressee until the following day, having been filed direct with the office at King-

man. It was asserted and admitted that error occurred in the transmission of a number of the words in the telegram. The addressee alleged that this was due in a large part, if not solely, to the fact, that the transmission was effected by means of a telephone line between Kingman and Oatman instead of by Morse. While not specifically denying this claim, the telegraph company explained that as an incident to the necessary change in their method of handling the business at Oatman, they had been compelled to use temporarily the services of an inexperienced employee. The respondent however, in mitigation, asserted that the errors in the misspelling of words were not of a character to render them meaningless to the addressee; that as a matter of fact, they involved mining terms and were, therefore, obviously understandable to the addressee and that no actual damage was sustained.

Respondent's records show that in 1927, the maximum number of charge accounts had been diminished by 35 per cent through the closing of accounts, discontinuance of business, or departure from town. It further showed that of 63 names to the petition, 17 of them sent one message in thirty to ninety days; 7 sent one message in three to six months, and 23 resorted to the use of telegrams only in case of dire emergency and that there were no such cases during the six months next preceding the hearing. The other signers to the petition were unknown.

It is not within the power of this Commission or any other similar body to require the continuation of service by a public service corporation at an actual loss. The law provides and the courts have unanimously held that service of this character must produce a reasonable return upon the investment. On the showing here made we could not, if we were so disposed, base a finding which would be sustained by the courts requiring the respondent company to incur additional expenses in the conduct of its service at Oatman. We are, therefore, of the opinion and find that the complaint herein should be dismissed. As just stated, we anticipate that the service which the company is now giving has proved adequate and satisfactory. This belief is supported by the past record of the Western Union in promptly meeting all legitimate demands arising in this state.

CALIFORNIA RAILROAD COMMISSION.

RE EAST BAY WATER COMPANY.

[Decision No. 20503, Application No. 15099.]

Consolidation, merger, and sale — Municipal acquisition.

1. The Commission is not concerned with the manner in which a municipal utility district, taking over the public utility plant, will finance the purchase or record the transaction on its books, p. 622.

Consolidation, merger, and sale — Commission jurisdiction — Proceeds.

2. The manner in which a utility authorized to sell its properties will distribute the moneys received to its creditors and stockholders, is a matter over which the Commission has no jurisdiction, p. 624.

[November 19, 1928.]

APPLICATION of a water utility to sell its properties to a municipality; authority granted.

Appearances: A. G. Tasheira, for East Bay Water Company; T. P. Wittschen, for East Bay Municipal Utility District; Sidney M. Van Wyck, Jr. in *propria persona,* intervener; John P. Beale, in *propria persona,* intervener.

By the **Commission:** The East Bay Water Company, hereinafter sometimes called the Company, asks permission to sell all of its assets, maps, records, and properties, including cash, current assets, franchise, good will, and any and all real property with the improvements thereon, and any and all personal property, to the East Bay Municipal Utility District, hereinafter sometimes called the District. The sale is to be made pursuant to the terms of the agreement dated September 26, 1928, a copy of which is filed in this proceeding.

The East Bay Water Company is a public utility now engaged in the business of supplying water for domestic and all other purposes to the cities and communities, and to the inhabitants thereof, on the east shore of San Francisco Bay and in the counties of Alameda and Contra Costa, California. The purchaser, the East Bay Municipal Utility District, is a political corporation organized and existing pursuant to an act of the legislature of the state of California. The district comprises within its limits the entire territory now served by East Bay Water Com-

pany, save for certain small localities outside the limits of said District now served by the East Bay Water Company. T. P. Wittschen, attorney for East Bay Municipal Utility District, takes the position that if the District acquires all the properties of East Bay Water Company it is not only legally but also by virtue of its contract with East Bay Water Company obligated to supply with water those consumers residing outside the district boundaries.

The assets and liabilities of East Bay Water Company as of August 31, 1928, are reported as follows. [Schedule omitted.]

The Company reports outstanding 130,872 shares ($13,087,200 par value) of stock. The outstanding stock consists of 100,000 shares ($10,000,000 par value) of Class A preferred, 29,872 shares ($2,987,200 par value) of Class B preferred and 1000 shares ($1,000,000 par value) of common stock. The funded debt, as reported in the foregoing balance sheet, includes bonds deposited as collateral with the trustee under the Company's unifying and refunding mortgage. The bonds actually outstanding are reported at $20,797,700.

The District has, under certain conditions, agreed to pay the stockholders and to the liquidators of the Company the sum of $13,962,200 plus accrued unpaid dividends, at the rate of 6 per cent per annum on the Class A preferred stock and 6 per cent per annum on the Class B preferred stock from the last dividend date, September 30, 1928, to the date of the transfer of the assets. The District, in addition to the above payment, assumes the payment of all the Company's liabilities of whatsoever nature. The $13,962,200 shall be disbursed as follows: The Class A preferred stockholders are to receive $100 per share plus current accrued dividends thereon at the rate of 6 per cent per annum from the last dividend date to date of payment; the Class B preferred stockholders are to receive $100 per share with unpaid current accrued dividends thereon at the rate of 6 per cent per annum from the last dividend date to date of payment; while the holders of common stock are to receive $500 per share. The balance of the $13,962,200 and said dividends shall be paid to the holders of Class B preferred stock in such amounts as the liquidators of the Company may determine.

Sidney M. Van Wyck, Jr., and John P. Beale, holders of common stock, have filed petitions of intervention urging the Commission not to grant this application, for the alleged reasons among others, that the company was not getting an adequate consideration for its properties, and that it had not complied with the rules of procedure of the Commission in that it filed no detailed inventory of its properties nor the original cost or present value thereof. The Company in its petition asked that inasmuch as it was asking permission to sell all of its properties to the district, it be permitted to deviate from the Commission's Rules of Procedure in so far as they require the filing of a detailed description of the property to be sold, together with the original cost to the East Bay Water Company and the present value thereof. Section 51 of the Public Utilities Act provides that no public utility may sell its public utility properties without the consent of the Railroad Commission. In its Rules of Procedure (Rule V) the Commission provides that when an application is made by a public utility for an order authorizing the sale, lease, assignment, mortgage or other disposition of the whole or any part of its property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, or by any means whatsoever, direct or indirect, the merger or consolidation of its property, franchises, or permits, or any part thereof, with any other public utility:

1. The petition must be made by all the parties to the proposed transaction, and, in addition to the requirements of Rule III, must show:

(a) In detail the reasons upon the part of each applicant for entering into the proposed sale, lease, assignment, mortgage or other disposition of such property, franchise or permit and all the facts warranting the same and showing that it is for the benefit of the public service.

(b) Detailed description of the property to be sold, leased, mortgaged or otherwise encumbered, together with the original cost to applicant and present value thereof.

[1] In this instance the property is not being transferred to another public utility. We are not concerned with the manner in

which the District will finance the purchase or record the transaction on its books. Were we to hold that the above rule required the filing of the data referred to, a matter which we are not ready to concede, the only purpose served by insisting that the data be filed, would be to secure someone's opinion as to the present value of the properties of East Bay Water Company. We feel that the record in this proceeding and the information in the files of the Commission, which it was stipulated might be considered in evidence, justifies us in reaching a conclusion in this matter without requiring the filing of the information to which reference has been made.

The East Bay Water Company was organized pursuant to the authority granted in Decision No. 3211, dated March 30, 1916, 9 Cal. R. C. R. 447, as amended. At three different times the Commission has been called upon to fix the rates charged by the Company. (Decision No. 5534, dated July 1, 1918, P.U.R. 1918F, 187, Decision No. 6745, dated October 11, 1919; and Decision No. 10347, dated April 22, 1922.) By various decisions, other than Decision No. 3211, as amended, it authorized the issue of the outstanding stock and bonds of the Company. In Decision No. 14973, dated May 26, 1925, (anno.) P.U.R.1926D, 45, it denied an application of East Bay Water Company to issue some $10,000,000 of securities to develop its Sacramento river project for the purpose of augmenting its water supply for the East Bay District. Quoting from Decision No. 14973:

"The record in this case is not such as to enable the Commission to make the finding that it is required to do by § 52 of the Public Utilities Act. On the contrary, we are confronted by evidence showing that another agency, the East Bay Municipal Utilities District, has been created and directed by the majority of voters of such district to bring in an additional water supply, and unequivocally asserts not only its willingness and desire, but also its ability to bring in a temporary supply of water pending the completion of the District's Mokelumne project, if and when it shall appear that such temporary supply is necessary. It seems clear, therefore, that the responsibility for bringing in a temporary supply of water, pending the completion of the Mokelumne

river project, should rest upon the district, and that the evidence proves the willingness of the district to assume such responsibility, as well as the desire of the peopde residing in the district to hold the district responsible for providing such supply. To authorize the issue of the bonds and stock, or notes, under the circumstances disclosed by the record in this proceeding would, we feel, result in a duplication of facilities and of wasteful expenditure of money, both of which are contrary to public policy, and neither of which are in the public interest."

The Company has been filing annual and monthly reports with the Commission.

The testimony shows that the price at which the Company asks authority to sell its properties was determined by negotiations extending over a long period of time. As is the case frequently in such negotiations the company originally asked more, and the District offered less than the price finally agreed upon. The president of the Company testified that under all the circumstances surrounding the operations of the Company and its possible future the proposed selling price was fair and equitable to the stockholders. It was suggested that the District should acquire the properties by condemnation proceedings, the thought being that a price so determined would be in excess of the agreed price. To indicate what such price might be is idle conjecture. In our opinion the District is paying and the Company is receiving a reasonable price for its properties.

[2] While we are asked to authorize the transfer of the properties of the Company pursuant to the terms of a certain agreement, it is not necessary for us to approve the agreement in all its particulars. We find that the price agreed upon between the parties is reasonable, and having so found, the manner in which the Company, if it sells its properties for said price, will distribute the same to its creditors and stockholders, is a matter over which we have no jurisdiction. Our jurisdiction extends only to the sale of the properties of the Company and that will be authorized by the following order: [Order omitted.]